

## EXHIBIT D

17:27:33

1 UNITED STATES DISTRICT COURT

2 WESTERN DISTRICT OF NEW YORK

3 **\*\*\*SEALED TRANSCRIPT\*\*\***

4 - - - - - X  
 MOOG INC., ) 22-CV-187  
 Plaintiff )

5 vs.

6 SKYRYSE, INC., et al ) Buffalo, New York  
 Defendant. ) May 5, 2022  
 7 - - - - - X

8 **STATUS CONFERENCE**9 **Proceeding held via Zoom for Government Platform**

10 TRANSCRIPT OF PROCEEDINGS  
 BEFORE THE HONORABLE JEREMIAH J. MCCARTHY  
 UNITED STATES MAGISTRATE JUDGE

11 FOR PLAINTIFF: SHEPPHARD MULLIN RICHETER & HAMPTON, LLP  
 12 BY: RENA ANDOH, ESQ.  
 LAI YIP, ESQ.  
 13 KAZIM A. NAQVI, ESQ.  
 TRAVIS J. ANDERSON, ESQ.  
 14 -and-  
 HODGSON RUSS, LLP  
 15 BY: ROBERT J. FLUSKEY, JR, ESQ.

16 FOR DEFENDANT: GIBSON DUNN & CRUTCHER, LLP  
 SKYRYSE BY: KATHERINE DOMINGUEZ, ESQ.  
 17 JUSTINE M. GOEKE, ESQ.  
 -and-  
 18 HARRIS BEACH, LLP  
 BY: TERRANCE P. FLYNN, ESQ.  
 19 -and-  
 LATHAM & WATKINS, LLP  
 20 BY: DOUGLAS E. LUMISH, ESQ.  
 GABRIEL S. GROSS, ESQ.

21 FOR DEFENDANT:  
 PILKINGTON/KIM LOCKE LORD, LLP  
 22 BY: RORY S. MILLER, ESQ.

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2 P R O C E E D I N G

3 \* \* \*

4  
17:35:54 5 MAGISTRATE JUDGE MCCARTHY: Good afternoon,  
17:35:55 6 everyone.

17:36:00 7 MR. FLUSKEY: Good afternoon.

17:36:00 8 MS. DOMINGUEZ: Good afternoon, your Honor.

17:36:02 9 MR. FLYNN: Good afternoon, your Honor.

17:37:04 10 MAGISTRATE JUDGE MCCARTHY: What I'm going  
17:38:18 11 to ask that we do is I'm going to ask Eric Glynn, my  
17:38:24 12 courtroom deputy clerk, to call the case and I'll ask  
17:38:27 13 everyone to identify themselves again and indicate whom  
17:38:32 14 they represent. Okay. Eric, you want to call the case.

17:38:36 15 THE CLERK: Yes, Judge. We're on the record  
17:38:37 16 in civil proceeding 22CV187 Moog, Inc versus Skyryse,  
17:38:44 17 Inc, et al, for a sealed status conference. The parties  
17:38:50 18 appear by video with Zoom. Would the participants  
17:38:55 19 please state their appearances?

17:38:58 20 MS. ANDOH: Your Honor, for Plaintiff you  
17:38:59 21 have Rena Andoh, Lai Yip, Travis Anderson, Kazim Naqvi  
17:39:05 22 from Sheppard, Mullin, and Rob Fluskey from Hodgson  
17:39:10 23 Russ.

17:39:10 24 MR. FLYNN: Your Honor, on behalf of  
17:39:12 25 Skyryse, you have local counsel, Terrance Flynn, from

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17:39:19 2 Harris Beach, and Kate Dominiguez and Justine Goeke from  
17:39:23 3 Gibson Dunn, and Douglas Lumish and Gabriel Gross from  
17:39:23 4 Latham & Winston.

17:39:29 5 MR. MILLER: And, your Honor, on behalf of  
17:39:30 6 the individual Defendants, Allen Pilkington and Kim,  
17:39:36 7 Rory Miller.

17:39:37 8 MAGISTRATE JUDGE MCCARTHY: Okay. Thank  
17:39:38 9 you, Mr. Miller. You're by phone, correct.

17:39:42 10 MR. MILLER: That's correct.

17:39:42 11 MAGISTRATE JUDGE MCCARTHY: Okay. Now, in  
17:39:43 12 addition, I just wanted to everyone to know that Judge  
17:39:46 13 Vilardo's law clerk, Will Hayes, is listening in by  
17:39:51 14 telephone. I also have, in my Chambers, my law clerk,  
17:39:56 15 Matt Yusick, but other than that, we do not have -- I  
17:40:01 16 recognize that the parties are concerned about  
17:40:04 17 confidentiality and we do not have anybody else  
17:40:07 18 listening in, as best as I can tell.

17:40:13 19 MS. ANDOH: Your Honor, could be I heard on  
17:40:15 20 that issue on confidentiality.

17:40:16 21 MAGISTRATE JUDGE MCCARTHY: I'm sorry, who  
17:40:18 22 is speaking.

17:40:18 23 MS. ANDOH: This is Ms. Andoh for Moog.

17:40:21 24 MAGISTRATE JUDGE MCCARTHY: Okay. Rena,  
17:40:22 25 yes. This is like Hollywood Squares, I have to look and

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17:40:28 2 see. I see you now.

17:40:28 3 MS. ANDOH: It really is, I should probably  
17:40:31 4 raise my hand so it's more obvious that I'm the talking  
17:40:34 5 head that is talking. Your Honor, we actually have a  
17:40:38 6 little bit of concern around this idea that these  
17:40:41 7 proceedings are sealed, presumptively. We don't  
17:40:44 8 actually believe that the material being discussed in  
17:40:47 9 these conferences is confidential. We've gone through  
17:40:50 10 and we looked at the topics that were discussed in the  
17:40:54 11 last status conference and what we really see is that  
17:40:57 12 there is nothing confidential about it. It appears that  
17:41:01 13 Skyryse wants these proceedings sealed because they  
17:41:05 14 don't want them on the public PACER docket, the  
17:51:56 15 documents and transcripts related to their disclosures  
17:52:00 16 around spoliation and around the use of our confidential  
17:52:04 17 information. You know, our view is, the prior  
17:52:06 18 conference should not have been sealed and we don't  
17:52:08 19 think this conference should, presumptively, be sealed.  
17:52:12 20 We believe the standard procedure should be followed  
17:52:15 21 going forward whereby Skyryse believes that there is  
17:52:19 22 material in the conference that should be sealed. They  
17:52:22 23 should be making an application with case law with good  
17:52:25 24 cause shown. We're just not seeing anything that  
17:52:28 25 warrants sealing. And I will say that, you know, the

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17:52:31 2 12-page letter that Skyryse sent to Moog on Monday was  
17:52:37 3 designated presumptively attorneys'-eyes-only under the  
17:52:40 4 protective order that hasn't yet been ordered. And  
17:52:45 5 while we're complying with that designation for the time  
17:52:49 6 being, we view it as improper because we don't see  
17:52:52 7 anything in the letter that is confidential, much less  
17:53:22 8 AEO, with the exception of one of the exhibits that  
17:53:24 9 contains information that arguably should be sealed.  
17:53:28 10 So, you know, we just wanted to raise the concern  
17:53:32 11 because we don't want to be in a universe where sealing  
17:53:36 12 is being presumed without there being any kind of cause.

17:53:39 13 MAGISTRATE JUDGE MCCARTHY: All right. I  
17:53:41 14 think that is a good point. For present purposes,  
17:53:45 15 though, at least for this afternoon, I'm going to  
17:53:48 16 continue that in place. But we may revisit on sealing,  
17:53:54 17 not only what goes forward, but what has occurred to  
17:53:58 18 date. For example, I do tend to agree with you that  
17:54:03 19 what was discussed last week was not confidential in  
17:54:10 20 that it did not specifically disclose or describe any  
17:54:17 21 particular information that might be considered a trade  
17:54:20 22 secret. But just to be on the safe side, I think for  
17:54:28 23 purposes of today's proceeding, I'm going to keep that  
17:54:31 24 in place and we can revisit it at a later date. Is that  
17:54:34 25 acceptable.

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17:54:35 2 MS. ANDOH: Thank you, your Honor. It is.

17:54:36 3 And I guess at some point maybe we can discuss what the  
17:54:40 4 procedures should be for the conferences. I certainly  
17:54:46 5 appreciate and Moog cares about its trade secrets or we  
17:54:51 6 wouldn't be in front of you in the first place, but we  
17:54:54 7 want to make sure the confidentiality designation isn't  
17:55:13 8 being abused.

17:55:13 9 MAGISTRATE JUDGE MCCARTHY: No, I agree. I  
17:55:15 10 agree. So, we'll put that on the back burner for right  
17:55:18 11 now, but I do have that in mind because there is also,  
17:55:22 12 irrespective of the parties' wishes, there is a right of  
17:55:25 13 public access, a presumptive right of public access, and  
17:55:30 14 we'll weigh those factors at a later date. But, for  
17:55:35 15 present purposes, let's, just to be on the safe side,  
17:55:40 16 let's deem this conference today sealed subject to  
17:55:45 17 possible unsealing down the road. Okay.

17:55:49 18 Now, I want to just so, and I believe I did  
17:55:52 19 this last week as well, there has been a lot of  
17:55:56 20 correspondence submitted to me last week and previously,  
17:56:00 21 but I want to just list for the parties' benefit the  
17:56:04 22 letters that I received yesterday, and those were  
17:56:08 23 directed by me, so I guess I would say, in one sense I  
17:56:12 24 appreciate that, and maybe in another sense, I don't,  
17:56:15 25 but I asked for it. So, I received, I think, in just in

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17:56:20 2 the order I received them, I received first a letter  
17:56:27 3 from Rena Andoh dated May 4, which had an attached, I  
17:56:41 4 think, three exhibits. Next, in the order of time, if I  
17:56:44 5 recall correctly, I received a letter also dated May 4,  
17:56:47 6 from Rory Miller. And last but not least, then I  
17:56:51 7 received two letters from Kate Dominguez at Gibson Dunn,  
17:56:57 8 both dated May 4th. And the top May 4th letter is the  
17:57:07 9 issue that grabbed my attention right off the bat, and I  
17:57:17 10 want to discuss that before we get too far down the  
17:57:20 11 road. And that is the fact that apparently new counsel  
17:57:23 12 or have appeared. Let's see, we have Mr. Gross and who  
17:57:32 13 else is -- I'm sorry, who else is with us? Mr. Lumish.  
17:57:36 14 Welcome to both of you.

17:57:38 15 MR. LUMISH: Thank you, your Honor.

17:57:39 16 MAGISTRATE JUDGE MCCARTHY: Are you going  
17:57:40 17 to be taking over entirely or are you going to be  
17:57:44 18 cocounsel with Gibson Dunn or how is this going to work.

17:57:48 19 MR. LUMISH: The plan is for us to take over  
17:57:51 20 entirely. We're working to getting up to speed and  
17:57:55 21 making that happen as expeditiously as possible.

17:57:59 22 MAGISTRATE JUDGE MCCARTHY: Okay. Well, I  
17:58:00 23 think, ultimately, the decision on -- well, put it this  
17:58:03 24 way. I don't think the Court has any concern about  
17:58:08 25 substitution if that is agreeable to the Plaintiff,



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17:58:10 2 provided that the substitution does not result in  
17:58:16 3 further delay of proceedings. So, I know you'll get up  
17:58:22 4 to speed as quickly as you can and -- and I'm not trying  
17:58:27 5 to delve into any attorney/client privilege issues, but  
17:58:31 6 how long have you been in the case, so to speak.

17:58:35 7 MR. LUMISH: Roughly 24 hours, your Honor,  
17:58:37 8 so we have a bit to go. We are committed to moving as  
17:58:40 9 quickly as we can and cooperating with Moog's counsel  
17:58:44 10 and the individual Defendant's counsel to make sure we  
17:58:46 11 do not delay things. We're not asking for delays, we're  
17:58:49 12 not asking for new dates. So, we're not intending in  
17:58:52 13 any way to have our appearance be a reason for a delay  
17:58:56 14 at this point.

17:58:57 15 MAGISTRATE JUDGE MCCARTHY: Okay. I  
17:58:58 16 appreciate that. Now, one of the things that Rena Andoh  
17:59:10 17 had proposed in her letter, and I think, given the time  
17:59:13 18 it was sent, I don't believe there were any responses  
17:59:16 19 from opposing counsel, but a series of proposed  
17:59:21 20 deadlines for various steps to be taken, culminating in  
17:59:25 21 a preliminary injunction hearing to begin on or about  
17:59:32 22 October 13th. Has anybody had a chance to react to that  
17:59:38 23 proposal yet.

17:59:40 24 MR. FLYNN: Your Honor, Terry Flynn. Can I  
17:59:42 25 state something before we get going, if that is

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17:59:45 2 possible?

17:59:45 3 MAGISTRATE JUDGE MCCARTHY: Yes.

17:59:46 4 MR. FLYNN: And, obviously, I expect Ms.  
17:59:48 5 Dominguez and Mr. Lumish will address it, and I  
17:59:53 6 apologize for interjecting, so we have an understanding  
17:59:56 7 with the Court. With respect to discussions you're  
17:59:58 8 going to hear today, specifically from Ms. Dominguez and  
18:00:01 9 others, that address forensic issues, I just want you to  
18:00:04 10 understand, our law firm and myself have not been privy  
18:00:26 11 in any manner to any of the forensic work, the  
18:00:30 12 investigation, anything whatsoever that has been  
18:00:32 13 identified, you know, conducted to date. So, if there  
18:00:36 14 are any pleadings, filings, disclosures that may be  
18:00:40 15 based upon what was discussed today have to be amended  
18:00:44 16 in any way whatsoever, we don't have the background,  
18:00:47 17 your Honor, to certify what has been stated or not from  
18:01:04 18 a forensic viewpoint. We learned, like you, from the  
18:01:10 19 letter there was going to be a change of counsel, which  
18:01:13 20 is totally appropriate for the client to so chose, and  
18:01:28 21 we don't know the circumstances beyond it, your Honor,  
18:01:31 22 and nor do we expect to learn the circumstances, your  
18:01:35 23 Honor, and, obviously, the 17-page letter that was just  
18:01:37 24 served on the 4th that deals with, specifically, with  
18:01:40 25 much forensic information, we did not participate in the

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18:01:45 2 preparation of the letter or have any role in it. And,  
18:02:22 3 for that matter, we're not a signatory to the letter.  
18:02:24 4 It's not that we're denying anything that has been  
18:02:26 5 asserted but I think it's very important as a law firm  
18:02:29 6 and a representative of our client to understand that  
18:02:32 7 all of the forensic part and the forensic work that has  
18:02:36 8 been done today has solely been done by lead counsel and  
18:02:39 9 has not been done by Harris Beach and myself. It's  
18:02:43 10 important that you know that, your Honor, and that Judge  
18:02:47 11 Vilardo know that, and counsel knows that so they know  
18:02:50 12 any documentation they have, they know from which it  
18:02:53 13 came. And Ms. Dominguez can address, obviously, all of  
18:02:56 14 the issues, as I'm sure you will raise, and it was  
18:03:00 15 important we notify you of that.

18:03:09 16 MAGISTRATE JUDGE MCCARTHY: Thank you.

18:03:15 17 MS. ANDOH: Your Honor, if I may be heard on  
18:03:17 18 this. So, your Honor had asked, had sort of referenced,  
18:03:21 19 whether Plaintiff's counsel had any issue with the  
18:03:23 20 substitution. We don't. We agree that Skyryse has the  
18:03:27 21 right to have whatever counsel they would like. We do  
18:03:31 22 have some level of concern around the fact that there  
18:03:55 23 have been a number of representations that were made by  
18:03:58 24 representation from Gibson Dunn with respect to their  
18:04:01 25 investigation into the spoliation issues and also into

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18:04:05 2 the potential misrepresentations that were made on the  
18:04:08 3 record about the use of Moog non-public information.  
18:04:13 4 And so we just, we just want to make sure we, at least,  
18:04:18 5 air on the record, that we have some level of concern  
18:04:22 6 around Gibson Dunn withdrawing if there is not going to  
18:04:26 7 be continuity in terms of the remedying of these  
18:04:31 8 misrepresentations on the record. There are a number of  
18:04:34 9 them that we have concerns around. We've outlined them  
18:04:36 10 in our letter. I'm also happy to list them. But, you  
18:04:39 11 know, we need some level of confidence that what we're  
18:04:43 12 not going to get is new lead counsel stepping in with  
18:04:47 13 local counsel, who have not been involved in the  
18:04:49 14 investigation and saying, well, we don't know anything  
18:04:51 15 about it.

18:04:52 16 MS. DOMINGUEZ: Your Honor, if I may.

18:04:54 17 MAGISTRATE JUDGE MCCARTHY: Go ahead, Kate.

18:04:56 18 MS. DOMINGUEZ: So, first of all, I would  
18:04:57 19 like to say, some of what was said relates to what Mr.  
18:05:03 20 Krevitt presented at the conference last week, and I  
18:05:04 21 would like to say before we get started, he would have  
18:05:07 22 liked to be here, he had a family issue which required  
18:05:11 23 him to fly back from Europe today, so that is the reason  
18:05:14 24 he is not here today. I would like to speak, because  
18:05:19 25 Ms. Andoh made references to purported

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18:05:21 2 misrepresentations. We take this so seriously. Gibson  
18:05:28 3 Dunn takes our role, as officers of the court, as  
18:05:32 4 seriously as we can take them. And so I want to, first  
18:05:36 5 of all, correct any statement that was made at any point  
18:05:41 6 in a filing to the Court or in a letter to Moog or any  
18:05:46 7 of the other parties was a statement that we believed to  
18:05:53 8 be true at the time. I think we said in our letters  
18:05:55 9 that there are statements that in light of what we now  
18:06:00 10 know, we wouldn't have made those statements if we had  
18:06:03 11 the knowledge we have now. So, for instance, Gibson  
18:06:07 12 Dunn felt that it was incumbent upon us to withdraw the  
18:06:12 13 12(b)(6) motion, we did that. And to the extent that  
18:06:16 14 there are other statements that, in light of, you know,  
18:06:20 15 further investigation, require correction, those will be  
18:06:24 16 corrected. And we informed Moog that we would do that.  
18:06:29 17 I just want to be clear, though, that at no point in  
18:06:32 18 time was a representation made or a statement made to  
18:06:37 19 the Court that we did not believe to be true. And I  
18:06:40 20 think that that is an important distinction to be drawn.  
18:06:44 21 As to the investigation, we are, of course, Gibson Dunn  
18:06:50 22 has been the one leading the investigation, as your  
18:06:54 23 Honor knows, and as Mr. Krevitt said when we approached  
18:06:59 24 Moog last, a week ago Sunday, and then the Court on  
18:07:03 25 Monday, we take these issues incredibly seriously, and

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18:07:06 2 so seriously that wanted to come early to the Court, so  
18:07:11 3 we approached Moog and we approached the Court while an  
18:07:15 4 investigation was pending and remains pending. And so I  
18:07:19 5 want to just be clear that conclusions are not drawn  
18:07:24 6 because the investigation is not over. And the bulk of  
18:07:30 7 what is being done now is in the hands of the forensic  
18:07:36 8 investigator, FTI. That firm will remain in place, and  
18:07:39 9 we believe and have faith that Latham and Watkins will  
18:07:45 10 be fully up to speed and capable of taking over that  
18:07:49 11 investigation, so that there should be, we believe, no  
18:07:54 12 prejudice or delay to any of the other parties by virtue  
18:07:59 13 of the substitution of counsel as to any historical  
18:08:02 14 matter. I just want to be very clear, that Gibson Dunn  
18:08:07 15 very much stands by all of the filings in terms of the  
18:08:11 16 knowledge that we had at the time we made them. And,  
18:08:13 17 again, to the extent that something needed to be  
18:08:15 18 withdrawn, we withdrew it. I understand there are some  
18:08:18 19 additional, for instance, as to the motion, as to the  
18:08:22 20 venue motion, there may be -- current counsel may  
18:08:25 21 consider amending that motion, and so there may be  
18:08:29 22 future filings that are either amended or corrective,  
18:08:34 23 but, as to anything that was done in the past, those  
18:08:37 24 statements were made in good faith at the time they were  
18:08:39 25 filed.

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18:08:40 2 MAGISTRATE JUDGE MCCARTHY: Well,  
18:08:40 3 appreciate that. I think, Ms. Andoh, and not to put  
18:08:44 4 words in your mouth, but I think Ms. Andoh's concern is  
18:08:48 5 that merely, if, for example, there were to be a change  
18:08:51 6 of position and walking back on what was said last week,  
18:08:59 7 at least there would be the opportunity to explore the  
18:09:01 8 reason for the change. I'm not saying that that will or  
18:09:05 9 will not occur. Obviously, I understand from last week,  
18:09:07 10 that the investigation was ongoing and is still ongoing,  
18:09:12 11 so, the only caveat I would have is that if -- if there  
18:09:19 12 is going to be some type of change of position, that  
18:09:23 13 there may be a requirement for an explanation that it  
18:09:27 14 may or may not involve your firm. Obviously, I'm not,  
18:09:31 15 you know, we're going to be sensitive to impinging on  
18:09:36 16 any attorney/client privilege, the information, but I  
18:09:39 17 think we just have to abide the event right now and see  
18:09:42 18 how that goes. But, in terms of what was represented to  
18:09:46 19 me last week by your firm, appreciate the fact that you  
18:09:50 20 came forward with that as soon as you became aware of  
18:09:55 21 it, and we'll just sort through as we go.

18:09:58 22 Now, the reason I ask, back to the question  
18:10:07 23 about the timeline that counsel, Ms. Andoh on behalf of  
18:10:12 24 Moog, has now proposed, is that, that's putting the  
18:10:17 25 preliminary injunction hearing out until October. And I

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18:10:21 2 recognize, also, from last week, and also from some of  
18:10:25 3 the filings that were made yesterday, that the venue  
18:10:29 4 motions -- well, certainly as to the individual  
18:10:35 5 Defendants, the venue motion is still alive, and I  
18:10:38 6 believe there was a statement that the venue motion on  
18:10:41 7 behalf of Skyryse might be amended in some fashion. As  
18:10:48 8 you all know, I have a non-dispositive referral from  
18:10:53 9 District Judge Vilardo, so, the motion, the 12(b)(6)  
18:10:59 10 motion, which I believe was withdrawn by Skyryse, but it  
18:11:04 11 was -- that motion was joined in by the individual  
18:11:08 12 Defendants, that motion, as well as the venue motions,  
18:11:15 13 at least, as things currently stand, will be addressed  
18:11:19 14 by Judge Vilardo. And one of the reasons -- Will Hayes  
18:11:25 15 is listening in today and will correct me if I'm wrong,  
18:11:28 16 but it's my understanding that you and Judge Vilardo  
18:11:32 17 will be scheduling a proceeding with counsel sometime  
18:11:36 18 next week to talk about those motions and the timing of  
18:11:41 19 them. Is that correct? Go ahead, Will. You there,  
18:11:56 20 Will? Well, I think if Will were with us, he would say,  
18:12:05 21 yes, that is correct. That is my understanding.

18:12:07 22 Will, you're still showing here. Can you  
18:12:10 23 speak up?

18:12:11 24 MR. HAYES: Can you hear me now?

18:12:13 25 MAGISTRATE JUDGE MCCARTHY: I can hear you



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18:12:14 2 now.

18:12:15 3 MR. HAYES: Okay. Yes, that is correct.

18:12:17 4 MAGISTRATE JUDGE MCCARTHY: Okay. Have you  
18:12:19 5 set that yet or is that going to be subject to further  
18:12:22 6 communication with counsel, correct.

18:12:25 7 MR. HAYES: The scheduling?

18:12:26 8 MAGISTRATE JUDGE MCCARTHY: Right.

18:12:31 9 MR. HAYES: Tentatively, it will be Tuesday  
18:12:33 10 afternoon. I'll circle up with new counsel for Skyryse  
18:12:37 11 after this so I can make sure the time and date works  
18:12:40 12 for them as well.

18:12:41 13 MAGISTRATE JUDGE MCCARTHY: Okay, thanks.  
18:12:42 14 But then, counsel, back to my original question about, I  
18:12:50 15 can't speak to how or when the motion to dismiss or the  
18:12:54 16 venue motion will be addressed or decided and depending  
18:12:58 17 on the outcome of that, the case may continue in this  
18:13:01 18 Court or it may be moved to California, I don't know,  
18:13:07 19 but the proposal that if the case stays in this Court,  
18:13:14 20 the hearing on the preliminary injunction motion would  
18:13:17 21 be sometime in October. What is counsels' reaction to  
18:13:22 22 that.

18:13:28 23 MS. DOMINGUEZ: Your Honor, if I may, for  
18:13:31 24 Skyryse, I believe that Skyryse believes that, in broad  
18:13:35 25 strokes, the schedule is very reasonable and workable.

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18:13:38 2 The one kind of caveat I would put to that, the schedule  
18:13:44 3 does call for a completion of document production by May  
18:13:49 4 19th, and I believe that can substantially be met. I  
18:13:52 5 have no expectation that there would be no problem with  
18:13:56 6 substantial completion by that date, but I have concerns  
18:14:00 7 about the ongoing nature of the investigation, the  
18:15:08 8 volume of information that is being uncovered, there  
18:15:13 9 could be additional productions after that and I  
18:15:16 10 wouldn't want there be to an issue, and what it means  
18:15:20 11 for, to have a complete document production on May the  
18:15:25 12 19th.

18:15:26 13 MAGISTRATE JUDGE MCCARTHY: Okay. Anybody  
18:15:27 14 else want to weigh in on that.

18:15:30 15 MS. ANDOH: Your Honor, I think the only  
18:15:46 16 point I would make is that document production was  
18:15:49 17 supposed to be completed on, I believe it was April  
18:15:51 18 27th. And the only reason why it didn't happen is  
18:15:54 19 because there was a pending dispute over the protective  
18:15:57 20 order. So, you know, the parties should have been  
18:16:00 21 prepared to produce all of their materials by the end of  
18:16:04 22 last month, which is why we're trying very hard to keep  
18:16:08 23 this on track. I'll also just note that your Honor  
18:16:12 24 obviously doesn't need to be told this again, but just  
18:16:15 25 for the record, the original stipulated TRO had a

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18:16:18 2 hearing date this week. Sorry, next week. We then  
18:16:24 3 shifted that hearing date back to the second week of  
18:16:27 4 July based on the expedited discovery stipulation that  
18:16:31 5 was filed with the Court a week later. We're now  
18:16:33 6 looking at having to move the hearing all the way into  
18:16:36 7 October. This case was filed in March. It's a very  
18:16:39 8 long timeline for a preliminary injunction, so the  
18:16:43 9 Plaintiff is eager to move things forward and thinks  
18:16:47 10 that, while there is always the possibility of  
18:16:50 11 additional documents may be identified and produced,  
18:16:53 12 that it is reasonable that the documents that should  
18:16:55 13 have been produced on April 27th, be produced on May  
18:16:59 14 19th subject to the resolution on the protective order.

18:17:02 15 MAGISTRATE JUDGE MCCARTHY: And just  
18:17:03 16 correct me if I'm wrong, but you do have injunctive  
18:17:06 17 relief in place already under the docket No. 25.

18:17:13 18 MS. ANDOH: We do. So, I mean, and I  
18:17:17 19 acknowledge that fully. I think, based on the  
18:17:19 20 disclosures that we've heard from Skyryse, we may be  
18:17:24 21 modifying that preliminary injunctive relief that we're  
18:17:27 22 seeking, which, I suppose, wouldn't be much of a  
18:17:30 23 surprise to your Honor. But we do have the injunction,  
18:17:33 24 the TRO in place. But I think the concern that Moog has  
18:17:36 25 is that we, based on the disclosures that we received

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18:17:40 2 from Skyryse, our understanding that that has been  
18:17:44 3 violated. And so it causes -- it causes pause for us in  
18:17:49 4 having a protracted continued discovery process without  
18:17:54 5 judicial intervention. But, I think that is an issue  
18:17:57 6 that, based on your Honor's admonitions, that your  
18:18:05 7 referral is non-dispositive, it's unclear to us whether  
18:18:10 8 the issue of violations of the March 11th order belong  
18:18:17 9 before your Honor or belong before Judge Vilardo.

18:18:20 10 MAGISTRATE JUDGE MCCARTHY: Well, I'll give  
18:18:21 11 you an answer and it's not to shirk any work, but it's  
18:18:25 12 my view, it's his order, so any claim of violations, I  
18:18:28 13 think, should be taken up with him. You know, I  
18:18:32 14 indicated when we spoke last week, I believe, that you  
18:18:38 15 know, the two track way of dealing with things, in most  
18:18:45 16 cases, works quite well where the magistrate judge is  
18:18:48 17 handling non-dispositive issues, such as discovery  
18:18:52 18 disputes, and the district judge is handling dispositive  
18:18:57 19 issues. In a case like this, it presents some unique  
18:19:04 20 issues because there could be a lot of overlap, but, for  
18:19:10 21 now, at least, unless and until I'm advised otherwise,  
18:19:15 22 that is the way we're going to proceed.

18:19:17 23 Rory Miller, I haven't heard from you on the  
18:19:22 24 proposed schedule. I know you now represent two  
18:19:26 25 individuals who have been terminated from employment by

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18:19:32 2 Skyryse, and, I take it, are not currently employed, is  
18:19:35 3 that right? I'm not trying to pry, but I'm just trying  
18:19:40 4 to get a handle on where things currently stand.

18:19:44 5 MR. MILLER: No, your Honor, that's correct.  
18:19:46 6 They have not secured alternative employment in the last  
18:19:49 7 10 to 12 days. And regarding the schedule as proposed  
18:19:53 8 by Moog, in large part, we are amenable to it. We think  
18:20:00 9 there are a couple of details that are not necessary to  
18:20:04 10 go into at this call, but, you know, the hearing date  
18:20:07 11 seems fine. We think that, perhaps, 14 days after the  
18:20:12 12 close of discovery for opposition within three weeks for  
18:20:16 13 reply after that maybe is not the best way to space  
18:20:22 14 those two, but, again, that doesn't seem like something  
18:20:26 15 we need to discuss with your Honor. That seems like  
18:20:28 16 something we can easily work out ourselves. I do want  
18:20:32 17 to note, there was a reference by Ms. Andoh to possibly  
18:20:35 18 modifying the relief being sought in the preliminary  
18:20:39 19 injunction. I don't have any problem with that, but,  
18:20:43 20 you know, I think that we should probably, as we talk  
18:20:46 21 about what Skyryse is going to be ordered to disclose,  
18:20:50 22 keep in mind, the deadline for it, and sort of say  
18:20:53 23 finalizing the PI so we all know what we're doing  
18:20:56 24 discovery on as well as what I'm opposing.

18:21:00 25 MAGISTRATE JUDGE MCCARTHY: Yeah. I think

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18:21:01 2 that is fair. Let me get back to -- well, all right.

18:21:07 3 Does anybody else want to weigh in in general on the

18:21:10 4 dates that were proposed by Ms. Andoh? Okay.

18:21:24 5 MR. MILLER: This is Rory Miller again. I

18:21:26 6 should add one more thing. The May 19th completion of

18:21:54 7 productions is fine with the individual Plaintiffs --

18:22:02 8 Defendants, assuming we come to a landing on whatever

18:22:04 9 the protective order is so we know what it is they are

18:22:08 10 doing.

18:22:09 11 MAGISTRATE JUDGE MCCARTHY: We're going to

18:22:10 12 get to that in a few moments. Because, obviously, that

18:22:12 13 is an issue that, we've talked about it a couple of

18:22:16 14 times, there has been a lot of correspondence on it, so

18:22:20 15 I do want to drill down on that in a short, in a short

18:22:26 16 while. And then, again, in terms of in which forum this

18:22:35 17 case will be resolved in, everything that I'm saying

18:22:39 18 today and everything we're talking about in front of me

18:22:42 19 is on the assumption that the venue is going to remain

18:22:48 20 in this Court. If that changes, obviously, that is

18:22:51 21 something that I have no control over.

18:22:55 22 Let's talk, for a few minutes about the

18:23:00 23 protective order. My understanding, and, bear in mind,

18:23:06 24 folks, that, you know, I saw reference to one of the May

18:23:10 25 4th letters being sent from one side to the other,

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18:23:15 2 something like 1:29 a.m., and good for all of you, but I  
18:23:21 3 tend to sleep around that time. So I've tried my best  
18:23:26 4 to study what came in yesterday in as much detail as I  
18:23:32 5 can. And try and prioritize what the various issues are  
18:23:37 6 that need to be discussed, but, I'll say in advance, I'm  
18:23:40 7 probably missing something, so, I encourage all of you  
18:23:44 8 to jump in at any point and correct me where I'm wrong  
18:23:51 9 and I will certainly take no offense. But, on the  
18:23:55 10 protective order, it seems to me that the major, perhaps  
18:24:01 11 the only area of dispute, is attorney's-eyes-only, and  
18:24:08 12 how that should apply to the individual Defendants,  
18:24:13 13 whether they can be absolutely precluded from  
18:24:19 14 attorney's-eyes-only documentation or whether they  
18:24:23 15 should be allowed to review that in the presence of  
18:24:27 16 their attorneys, but not to make any copies of it. Is  
18:24:27 17 that --

18:24:33 18 MS. ANDOH: Your Honor, actually, the  
18:24:34 19 dispute is with Skyryse with respect to their employees.  
18:24:39 20 We have engaged in extensive meet and confers with the  
18:24:44 21 individual Defendants' counsel, and we, with respect to  
18:24:48 22 the individual Defendants, particularly given that  
18:24:51 23 they've now been fired, even though it is certainly not  
18:24:54 24 Moog's ideal situation to happen to be able to view  
18:24:57 25 material that they took from us, we understand that they

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18:25:01 2 need to be able to prepare a defense, and that they've  
18:25:04 3 got a need to have some ability to help guide their  
18:25:08 4 counsel, and so we added a provision to be able to see  
18:25:14 5 materials that they authored or that we sent and  
18:25:19 6 received in the presence of their counsel and they are  
18:25:22 7 laid out in the draft order we submitted. The big  
18:25:26 8 dispute we have outstanding is with Skyryse because we  
18:25:31 9 don't believe their employees should be able to view  
18:25:35 10 materials, even though they formally sent and received  
18:25:38 11 them when they were formerly at Moog. They have hired  
18:25:42 12 20 former Moog employees. I don't know how many are  
18:25:45 13 currently out on administrative leave. A number are out  
18:25:49 14 on administrative leave because they -- because either  
18:25:54 15 because of spoliation issues and/or there were search  
18:25:58 16 term hits on their computers for Moog information. So,  
18:26:02 17 these are people that have been placed on leave by  
18:26:05 18 Skyryse for, potentially, improperly accessing Moog  
18:26:11 19 information or otherwise not complying with the  
18:26:34 20 retention requirements, and those are the people that  
18:26:38 21 they want to be excepted from the AEO provision to be  
18:26:41 22 able to review our materials under the rubric that their  
18:26:45 23 input is needed in order to prepare their defense. To  
18:26:48 24 put this in context, Mr. Krevitt, in the previous  
18:26:52 25 conferences, referenced that Skyryse has 71 employees,



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18:26:57 2 of them, 20 of them are former Moog employees. So,  
18:27:22 3 allowing all former Moog employees to view their  
18:27:27 4 materials, essentially allows a quarter of Skyryse's  
18:27:30 5 workforce to basically violate the AEO provision. It  
18:27:34 6 essentially makes the AEO provision not an AEO  
18:27:39 7 provision, that's for sure. They also won't tell us, at  
18:27:42 8 least to date, they have not told us who in the Moog  
18:27:46 9 employees have been placed on administrative leave and  
18:27:49 10 for what reasons they have been placed on administrative  
18:27:52 11 leave, so we can't have a discussion with them around  
18:28:25 12 whether there would be some subset or not that we would  
18:28:29 13 agree to. Although, given the allegations in the case,  
18:28:31 14 I don't think we would under any circumstance. You  
18:28:34 15 know, we -- we just don't see that it's necessary.  
18:28:40 16 There is a carve out in there that allows for one of  
18:28:43 17 their in-house lawyers to view AEO material. That same  
18:28:50 18 carve out gives Moog one in-house lawyer that can review  
18:28:54 19 AEO information. That is an equal playing field. If  
18:28:59 20 Skyryse's version of the AEO provision were put in  
18:29:03 21 place, it would be an incredibly prejudicial provision  
18:29:07 22 for Moog because Moog does not have 20 former Skyryse  
18:29:12 23 employees working for it that would be in a position to  
18:29:15 24 view the materials that are at issue in this case. And  
18:29:17 25 it also would really render any ability for Moog to keep

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18:29:22 2 its confidential information confidential in this case.

18:29:25 3 It would make it functionally extraordinarily difficult.

18:29:29 4 It's just our view is this is just not what a provision  
18:29:33 5 is designed to be.

18:29:34 6 MAGISTRATE JUDGE MCCARTHY: Who wishes to  
18:29:35 7 be heard to the contrary.

18:29:37 8 MS. DOMINGUEZ: Your Honor, if I could, Kate  
18:29:39 9 Dominguez for Skyryse. So, I want to address at the  
18:29:42 10 outset something Ms. Andoh said about administrative  
18:29:46 11 leave that is not correct, and it's incredibly important  
18:29:50 12 that the record be clear. We, at Gibson Dunn and  
18:29:55 13 Skyryse, in coordination, were prophylactic in putting  
18:30:02 14 individuals on administrative leave. If, for instance,  
18:30:05 15 they had hits against Moog's filing or hash value list  
18:30:11 16 and indications of deletions, regardless of whether  
18:30:15 17 there was knowledge at this point or indications that  
18:30:19 18 the deletions were of relevant information, and as to  
18:30:23 19 the file list, I'll just, I know Mr. Krevitt spoke to  
18:30:26 20 this in the last hearing, your Honor, but it's really  
18:30:29 21 important to understand, that file list is so over  
18:30:31 22 inclusive that it includes common application files that  
18:30:35 23 anyone on this -- in this conference might find on their  
18:30:39 24 computer. So if you ran that list against any of the  
18:30:41 25 attendees of this conference, you may very well find

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18:30:46 2 hits, and that may be just because we use all of the  
18:30:49 3 same common applications. So, we're dealing with a  
18:30:52 4 situation where we sought a need to take immediate  
18:30:55 5 action. We didn't know what situation we had on our  
18:30:58 6 hands. We knew it would require investigation. And so  
18:31:01 7 we took what we thought was fairly extreme prophylactic  
18:31:07 8 action to put individuals on leave. As the  
18:31:10 9 investigation proceeds, many of those people may turn  
18:31:13 10 out to be completely innocent of any wrongdoing and I  
18:31:17 11 just, I want to make sure it's clear. Because what Ms.  
18:31:20 12 Andoh said indicated that we already kind of know these  
18:31:24 13 are bad guys because they are on administrative leave  
18:31:27 14 and that is exactly what we're trying to avoid in our  
18:31:30 15 explanation of the prophylactic action we were taking.  
18:31:44 16 Sorry, my light just went out. And to make it clear  
18:31:47 17 that the mere fact of someone having been put on leave  
18:31:51 18 is not the conclusion of wrongdoing. So that is just  
18:31:53 19 the first thing I wanted to clarify for the record.

18:31:56 20 MAGISTRATE JUDGE MCCARTHY: Well, just,  
18:31:58 21 along those lines, I didn't take it, when that statement  
18:32:02 22 was made last week, I did not take that as being an  
18:32:06 23 indication of necessarily an indication of  
18:32:09 24 acknowledgement of wrong doing. Maybe it is, maybe it  
18:32:13 25 isn't, but I took it in the sense that it was offered

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18:32:16 2 mainly an attempt to err on the side of caution. So, if  
18:32:24 3 your concern is that I or Judge Vilardo would already  
18:32:28 4 draw a conclusion that the fact that somebody is put on  
18:32:34 5 administrative leave means they must have done something  
18:32:37 6 wrong, we're not drawing that inference at this time.  
18:32:43 7 Maybe down the road, maybe not.

18:32:45 8 MS. DOMINGUEZ: Thank you, your Honor. And  
18:32:46 9 if I may address the other part of what Ms. Andoh spoke  
18:32:50 10 to with respect to the AEO provision.

18:32:52 11 MAGISTRATE JUDGE MCCARTHY: Right.

18:32:54 12 MS. DOMINGUEZ: So, our issue is we are  
18:32:58 13 looking for a very limited provision that would allow  
18:33:04 14 authors and recipients, those who were already privy to  
18:33:08 15 the information, so senders, authors, recipients of  
18:33:14 16 information that Moog has marked as "highly  
18:33:16 17 confidential" or "confidential," that those individuals  
18:33:19 18 be allowed, solely in the presence of counsel and not to  
18:33:23 19 retain copies or to retain notes or anything like that,  
18:33:27 20 but to be able to view those documents in the presence  
18:33:30 21 of counsel for the purposes of Skyryse's defense. And I  
18:33:38 22 think the -- the idea that there is risk from that  
18:33:42 23 because somehow these individuals would be, you know,  
18:33:45 24 potentially misusing the information, is just totally  
18:33:48 25 inconsistent with the controls that have been suggested

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18:33:52 2 and would be put in place around the context in which  
18:33:55 3 the documents would be shown. And then, further, to  
18:33:59 4 that, there would be no harm in that context from the  
18:34:02 5 individuals viewing the documents because these are  
18:34:04 6 individuals who would have already seen the documents,  
18:34:07 7 either because they were authors, recipients or senders.  
18:34:12 8 And it is highly relevant, although, so one is, the  
18:34:16 9 first point is there is no prejudice to Moog there under  
18:34:20 10 the circumstances and controls that would be in place.  
18:34:24 11 There is, on the other hand, prejudice to Skyryse in the  
18:34:29 12 defense of this action if it's not allowed to show  
18:34:32 13 individuals who have already seen the information.  
18:34:36 14 There may be important context that will be missed, and  
18:34:40 15 could be critical to the defense, that a lawyer would  
18:34:43 16 not know without asking the individual about it. And  
18:34:46 17 that kind of context is difficult or maybe impossible to  
18:34:51 18 get if the individual can't actually see the document  
18:34:53 19 that we're talking about. And I would just make one  
18:34:56 20 other note, which is, we did -- we understand that for  
18:35:00 21 issues that are taken up subject to or close to this  
18:35:06 22 informal letter briefing process, that your Honor does  
18:35:09 23 engage in a formal briefing process if issues are still  
18:35:12 24 disputed. So, we do understand that a decision may be  
18:35:16 25 down the road on the ultimate dispute. In the meantime,

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18:35:18 2 we did e-mail counsel for Moog and let them know that,  
18:35:22 3 pending resolution of this dispute, we are perfectly  
18:35:25 4 amenable to abiding by the draft, the more restrictive  
18:35:31 5 draft order that Moog has proposed. We said that we  
18:35:54 6 would, I produce and designate, subject to that draft,  
14:22:21 7 and abide by the further restrictions in that draft  
14:22:26 8 pending the Court's resolution of this dispute

14:22:28 9 MAGISTRATE JUDGE MCCARTHY: Okay.

14:22:30 10 MS. ANDOH: Your Honor, if I could be heard.

14:22:31 11 MAGISTRATE JUDGE MCCARTHY: Yes. Go ahead.

14:22:32 12 MS. ANDOH: Just two points. One is, you  
14:22:39 13 know, Gibson Dunn's disclosures, to date, with respect  
14:22:43 14 to what we know has happened with information is  
14:22:46 15 incredibly concerning with respect to these folks being  
14:22:52 16 able to view those documents in the presence of counsel.  
14:22:55 17 The need for the 1:30 a.m. letter from Gibson --

14:23:00 18 MAGISTRATE JUDGE MCCARTHY: That is not by  
14:23:01 19 way of criticism.

14:23:03 20 MS. ANDOH: No, no, no. I also have  
14:23:05 21 tremendous respect for the fact that they stuck it out  
14:23:10 22 to get the letter out the door. But, pointing to page  
14:23:13 23 two of the letter, it says, so far, it appears -- this  
14:23:15 24 is the middle of page two of the letter, "So far, it  
14:23:17 25 appears that Moog information may have been accessed on

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14:23:23 2 Skyryse issued laptops primarily via personal USB  
14:24:50 3 devices held by Pilkington or Kim that we believe  
14:24:54 4 contained Moog information, and which were inserted into  
14:24:57 5 the Skyryse issued laptops of certain other Skyryse  
14:25:06 6 employees. Network resources to which Mr. Pick  
14:25:38 7 Pilkington uploaded certain files, which Moog may claim  
14:25:42 8 as its own or may reflect information that Moog may  
14:26:25 9 claim as its own. And, three, what Mr. Pilkington and  
14:26:30 10 Ms. Kim's accessing of what may be Moog files." The  
14:26:49 11 point I'm trying to make by reading this provision out  
14:26:52 12 is to say that the value of looking at Moog's  
14:26:55 13 information is looking at it, it's not necessarily  
14:26:57 14 copying and pasting it for use, although that may have  
14:27:00 15 also occurred. A lot of the value of the material, of  
14:27:04 16 the 1.4 million files that Ms. Kim and Mr. Pilkington  
14:27:08 17 downloaded is essentially a reference library. It's  
14:27:12 18 like looking at Westlaw head notes to the idea they  
14:27:16 19 would be given access to continue to review that  
14:27:19 20 material even in the presence of counsel does not negate  
14:27:49 21 the value that is found in them in being able to view  
14:27:54 22 them. I think that is a point that is very important to  
14:27:58 23 make, because there is severe prejudice to us in them  
14:28:01 24 being able to continue to reference and review those  
14:28:06 25 materials. And when Ms. Dominguez talks about how some

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14:28:09 2 of the search terms are highly generic, I think it's a  
14:28:13 3 fair inference to make, your Honor, that these employees  
14:28:16 4 were not placed on leave because Word, the Microsoft  
14:28:20 5 application, Word application, hit on their documents.  
14:28:24 6 You know, pages four and five of Gibson Dunn's letter  
14:28:28 7 lists the search terms that were run against these  
14:28:31 8 computers, and it's far more than generic file names.  
14:28:34 9 It includes the name "Moog" with a wild card on it. And  
14:28:38 10 it also includes 32 search terms that were proposed by  
14:28:43 11 Moog's counsel based on very specific information that  
14:28:47 12 we know tends to be highly unique to Moog's code. And  
14:28:51 13 they have not disclosed, at least not in full, the  
14:28:56 14 number of hits that each of these search terms has  
14:29:00 15 resulted in. And so, you know, I just want to be really  
14:29:04 16 clear, it's not as innocuous as Ms. Dominguez may be  
14:29:09 17 inferring that it is. I think, at its core, the concern  
14:29:14 18 here is it's highly asymmetrical. I mean, none of our  
14:29:18 19 client representatives can be looking at any of their  
14:29:51 20 stuff that is designated AEO when we already supplied  
14:29:56 21 concerns for the Court that the AEO designation is being  
14:30:00 22 overused. So this idea that they are going to be able  
14:30:34 23 to have one quarter of their work force review our  
14:30:38 24 material when not a single one of our employees, who are  
14:30:48 25 skilled or knowledgeable about source code would be



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14:30:54 2 allowed to, and about the function of Moog's material,  
14:30:57 3 would be able to review AEO materials is extremely  
14:31:05 4 prejudicial.

14:31:06 5 MAGISTRATE JUDGE MCCARTHY: Okay. A couple  
14:31:07 6 of things. I appreciate, pending a ruling on this,  
14:31:13 7 Skyryse will abide by the more conservative approach. I  
14:31:18 8 appreciate that. And that raises a question in my mind  
14:31:21 9 at which I'll discuss in a few minutes about just,  
14:31:24 10 logistically, how we're going to address those issues  
14:31:27 11 going forward, whether we'll just go immediately to  
14:31:31 12 motion practice and whether we'll continue with a  
14:31:34 13 correspondence and meeting like we do.

14:31:37 14 Let me ask Ms. Andoh. You already have, by  
14:31:43 15 way of the TRO, the stipulation and proposed order,  
14:31:46 16 docket number 25, which Judge Vilardo approved, docket  
14:31:51 17 No. 28. You have a prohibition, a court order  
14:31:57 18 prohibiting defendant from using, in any way, any  
14:32:02 19 non-public Moog information. I recognize that you may  
14:32:07 20 have some level of concern about whether or not they  
14:32:10 21 will abide by that, but I think that is true with any  
14:32:14 22 type of court order. And what troubles me is, and I'll  
14:32:17 23 come back to it in a minute, the hardship here, you're  
14:32:22 24 talking about in terms of your own employees as well,  
14:32:24 25 but how can -- how can I be sure, or Judge Vilardo, that

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14:32:33 2 an attorney looking at something might not miss some  
14:32:39 3 significance to a particular document that only, only  
14:32:43 4 the employee would perceive. It does seem to me right  
14:32:50 5 now that the better approach is to allow them to look at  
14:32:54 6 the documents that they authored or is shown as copied  
14:32:59 7 on in the presence of counsel, not to copy, not to use.  
14:33:02 8 You've already got a prohibition against use. And, but,  
14:33:06 9 that that should apply both ways then. That if Skyryse  
14:33:16 10 employees are going to be allowed that access, then,  
14:33:20 11 then Moog should as well.

14:33:23 12 MS. ANDOH: Your Honor --

14:33:24 13 MAGISTRATE JUDGE MCCARTHY: What is wrong  
14:33:24 14 with that.

14:33:26 15 MS. ANDOH: So, I think a few things.  
14:33:29 16 First, the concern we have about them abiding by, first  
14:33:32 17 of all, the preliminary injunction or, sorry, the  
14:33:35 18 stipulated TRO that is currently in place actually  
14:33:39 19 restricts them from viewing the material, so this would  
14:33:42 20 be an end run around that order. And I also point out  
14:33:46 21 that, and, again, I understand that this is probably an  
14:33:49 22 issue for Judge Vilardo, we know they violated that  
14:33:51 23 order already. So it is particularly concerning to us  
14:33:54 24 that we would then continue to rely on good faith in  
14:33:58 25 abiding by that order when they are being allowed to

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14:34:01 2 review our material. I also think that, you know,  
14:34:04 3 frankly, they can do the exact same thing that Moog is  
14:34:07 4 having to do as a result of the AEO provision being put  
14:34:11 5 in place and our software engineers not being able to  
14:34:14 6 view Skyryse material, which is hire and independent  
14:35:09 7 source code expert, educate them and send them in to do  
14:35:35 8 the review. You know, we would like for our software  
14:35:38 9 engineers, who really understand this stuff, to be able  
14:35:40 10 to view Skyryse AEO materials, too. Of course, it's a  
14:35:44 11 huge advantage, but the whole point of Skyryse refusing  
14:35:47 12 to allow our folks to view it is the same issue we have  
14:35:53 13 with their folks reviewing our stuff. The fact that  
14:37:13 14 they do understand it and it's competitive and sensitive  
14:37:23 15 information that they can use in a context other than  
14:37:26 16 this litigation, even if they are only viewing it in the  
14:37:30 17 presence of counsel.

14:37:30 18 MAGISTRATE JUDGE MCCARTHY: Well, okay.  
14:37:32 19 Ms. Andoh, I think you just gave me a cheap and easy  
14:37:36 20 out, which I may or may not avail myself of, but you  
14:37:42 21 pointed out, which I had overlooked, that that is a  
14:37:45 22 provision of Judge Vilardo's order, so maybe he is the  
14:37:48 23 one that has to address this. But I will just say, my  
14:37:53 24 reaction to things is, and I'll hear again from Ms.  
14:37:57 25 Dominguez or whoever wants to speak, that whatever level

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14:38:02 2 of protection is in place, should be bilateral, so, both  
14:38:06 3 sides should have the same opportunity to view or not  
14:38:10 4 view information. But, again, as I sit here today,  
14:38:17 5 given the level of protections that are in place, I  
14:38:21 6 don't see a real problem with an employee being allowed  
14:38:29 7 to view a document which he or she either created or is  
14:38:41 8 copied on in presence of counsel to be utilized either  
14:38:45 9 way. That, of course, would require a modification to  
14:38:48 10 the stipulation. But that then takes me back to the  
14:38:53 11 logistical issue that I just raised, which is in a lot  
14:38:57 12 of cases I've had good success with, the procedure that  
14:39:03 13 we're implementing right now, which is before anybody  
14:39:07 14 resorts to motion practice, we have exchange of  
14:39:10 15 correspondence and then we talk about things and we see  
14:39:13 16 if we can agree. The problem in this case is, and I  
14:39:18 17 don't want to invite more motion practice, but everybody  
14:39:22 18 is operating under the assumption, as am I, that I can't  
14:39:26 19 issue any orders in these type of conferences because  
14:39:31 20 all I've asked for is correspondence, and there are no  
14:39:36 21 formal motions. So, let me toss it back to all of you  
14:39:41 22 to see how you want to proceed. You know, I don't want  
14:39:45 23 to invite an onslaught of motions, on the other hand, if  
14:39:49 24 we proceed this way and then somebody says, well, you  
14:39:52 25 know, I give the benefit of my thinking, and somebody

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14:39:55 2 says, that's great, but I don't agree with that, and I  
14:39:58 3 want to file a motion, which they are completely  
14:40:02 4 entitled to do, but it does cause additional delay. So,  
14:40:08 5 I guess I'm asking all of you, should I -- should I  
14:40:17 6 retract the process that I have used thus far in this  
14:40:20 7 case and in many other cases with some measure of  
14:40:24 8 success, and just tell everybody that if you go to --  
14:40:27 9 have a dispute, go ahead and make a motion, or should we  
14:40:32 10 continue this way? For example, if the parties were to  
14:40:34 11 agree, okay, Judge, you've got all of the papers you  
14:40:37 12 need, and you can make your decision based on the  
14:40:40 13 papers, we can docket them and deem them to be motions.  
14:40:45 14 So that is fine. But anybody want to react how we want  
14:40:48 15 to proceed here?

14:40:51 16 MR. MILER: Your Honor, this is Mr. Miller  
14:40:53 17 for the individual Defendants. Not to throw a wrench  
14:40:57 18 into the ordinarily progression of this hearing, but  
14:41:20 19 there is one other issue on the substance of the  
14:41:22 20 protective order that I wanted to raise before we move  
14:41:24 21 on, if that is okay.

14:41:26 22 MAGISTRATE JUDGE MCCARTHY: Yeah, we're not  
14:41:27 23 done with it, but go ahead.

14:41:29 24 MR. MILLER: Okay. So, Ms. Andoh had said  
14:41:32 25 that things have been resolved vis-à-vis, the AEO

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14:41:36 2 provisions as to the individual Defendants. And that is  
14:41:39 3 not entirely there. We're about 95 percent resolved.  
14:41:44 4 There is still about a 5 percent difference of opinion.  
14:41:47 5 And what that really relates to is we don't have the  
14:41:52 6 designated in-house attorney like either Moog or Skyryse  
14:41:57 7 have. So there is no one, other than our clients and  
14:42:03 8 us, the outside counsel to make decision. That leaves  
14:42:07 9 us in an awkward position when we get things like, say,  
14:42:11 10 the Skyryse disclosure letter that just, you know, came  
14:43:09 11 in that your Honor has also seen, that was presumptively  
14:43:14 12 designated "AEO." I can't show that to my clients. I  
14:43:17 13 can't tell my clients what it says. I can't ask my  
14:43:20 14 clients their opinion on it if they are not allowed to  
14:43:23 15 look at it. I can't give them that information. They  
14:43:27 16 didn't write it and were not recipients of it. So the  
14:43:30 17 carve out, as it stands, doesn't really help them or me  
14:43:34 18 to prepare their defense. I can't ask them, hey, they  
14:43:37 19 say there was this USB drive that was plugged in, what  
14:43:41 20 does that refer to or did that really happen this way.  
14:43:45 21 I'm prohibited from doing that under the way that the  
14:43:48 22 protective order as currently drafted would be. And  
14:43:51 23 that is a humongous problem because we'll see that again  
14:43:55 24 with discovery responses that are designated "AEO."  
14:44:00 25 Materials that they don't often disclose on their face

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14:44:04 2 who the authors or recipients were and so forth. So,  
14:44:20 3 our proposal was to simply strike the section which  
14:44:24 4 limited it for the individual Defendants only as to  
14:44:29 5 documents that say "authors" and "received" such that  
14:44:32 6 they could review any AEO materials in the presence of  
14:44:35 7 counsel without keeping copies, without taking notes,  
14:44:38 8 without so forth, and having us retain all of the  
14:44:40 9 documents at the end, and only for the purpose of this  
14:44:43 10 litigation. So, the issue that really comes up that  
14:44:52 11 really doesn't apply to Moog or Skyryse, because they  
14:44:56 12 have their in-house counsel, is what do I do about  
14:44:58 13 litigation documents that I discuss with people? So,  
14:45:02 14 that is an issue that I think isn't necessarily as front  
14:45:06 15 and centered with this discussion about, you know, who  
14:45:10 16 should be seeing what source code and things, but it's a  
14:45:13 17 problem that is unique to the individual Defendants.  
14:45:15 18 And like I said, we proposed a solution that I don't  
14:45:18 19 think Moog is entirely there on yet when we were talking  
14:45:22 20 about it, but you know that is where there is still that  
14:45:26 21 5 percent difference of opinion.

14:45:29 22 MS. ANDOH: Your Honor, if I could be heard  
14:45:30 23 on that. I think we do have a difference of opinion on  
14:45:33 24 that, and I think that that really goes back to the  
14:45:37 25 question of over-designation and whether we are going to

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14:45:42 2 engage in it, which we don't intend to. I don't think  
14:45:45 3 that the universe of materials that Mr. Miller is  
14:45:48 4 concerned about is going to be very large. But, I mean,  
14:45:50 5 I think the point of putting these provisions in place  
14:45:54 6 is you put the provision in place and there is a  
14:45:56 7 procedure to request de-designation of materials if they  
15:00:14 8 feel that the designation is either improper or if they  
15:00:17 9 feel otherwise, if they feel they need to be able to  
15:00:21 10 show the materials to their clients. We don't think  
15:00:25 11 it's appropriate to gut the AEO provision on the  
15:01:25 12 possibility that there are certain materials that Mr.  
15:01:28 13 Miller subsequently believes he wants to show his  
15:01:31 14 clients in that instance or that he believes that we  
15:01:51 15 over-designated on and are appropriately materials that  
15:01:54 16 he should be able to show his clients. If that happens,  
15:01:57 17 we've told him repeatedly, we're happy to have that  
15:02:01 18 discussion. And if there is good cause for it, we'll  
15:02:03 19 likely agree to it because we're not here to be  
15:02:06 20 unreasonable. And as your Honor has already sort of  
15:02:09 21 pointed out, we've already agreed and understand they  
15:02:12 22 are in a different position than Skyryse is with respect  
15:02:15 23 to viewing materials and have agreed that they should be  
15:02:18 24 able to review material that they authored or sent or  
15:02:22 25 received, but the idea that they should be wholesale



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15:02:43 2 allowed to review presumptively all AEO materials, we  
15:02:47 3 don't think is an appropriate solution here.

15:02:50 4 MAGISTRATE JUDGE MCCARTHY: Point me, if  
15:02:52 5 you would, to the specific provision of the proposed  
15:02:55 6 protective order that provides for de-designation or  
15:03:00 7 undesignation of AEO materials.

15:03:03 8 MS. ANDOH: Let me -- give me one second,  
15:03:06 9 your Honor, to scroll to it.

15:03:07 10 MAGISTRATE JUDGE MCCARTHY: Sure.

15:03:08 11 MS. ANDOH: I believe it is 6.6(c) or,  
15:03:27 12 sorry, that is the expert disclosure, I apologize. Give  
15:03:32 13 me one second here.

15:03:33 14 MAGISTRATE JUDGE MCCARTHY: Okay.

15:05:55 15 MR. MILLER: Rena, look at section 5,"  
15:06:00 16 challenging confidentiality designation."

15:06:06 17 MS. ANDOH: Thank you. Thank you.

15:06:08 18 MR. MILLER: You were too far. You got to  
15:06:10 19 section 6, so you weren't going to find it.

15:06:13 20 MS. ANDOH: So it's remand 5, your Honor, as  
15:06:16 21 Mr. Miller just helpfully pointed out.

15:06:19 22 MAGISTRATE JUDGE MCCARTHY: Okay, just a  
15:06:20 23 second. Section 6.5.

15:06:23 24 MS. ANDOH: Roman numeral V, page, it's, if  
15:06:26 25 you're looking at Moog's May 4th submission to your

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15:06:31 2 Honor, it's the third exhibit.

15:06:33 3 MAGISTRATE JUDGE MCCARTHY: Right. I've  
15:06:34 4 got it.

15:06:34 5 MS. ANDOH: A to the third exhibit.

15:06:37 6 MAGISTRATE JUDGE MCCARTHY: Okay, so I have  
15:06:39 7 that in front of me. What page.

15:06:41 8 MS. ANDOH: Page nine, there is a header  
15:06:43 9 Roman Numeral V "challenging confidentiality  
15:06:46 10 designations."

15:06:47 11 MAGISTRATE JUDGE MCCARTHY: Okay. And that  
15:07:00 12 talks about a meet and confer, and then within seven  
15:07:04 13 days, if you can not resolve, you may seek relief from  
15:07:10 14 the Court. Okay. I guess my question would be, how  
15:07:19 15 many of these disputes might either I or Judge Vilardo  
15:07:26 16 anticipate receiving.

15:07:31 17 MS. ANDOH: Well, and I will make the  
15:07:32 18 representation to the Court, we do not intend to  
15:07:35 19 over-designate material as "AEO." That is not where we  
15:07:38 20 sit. You know, I can't represent how many disputes  
15:07:42 21 there are going to be. As you know, we already know  
15:07:46 22 that Skyryse has over-designated materials as "AEO" even  
15:07:50 23 before the protective order is in place. What I would  
15:07:52 24 envision here is that document production is supposed --  
15:07:58 25 is to be complete in short order pursuant to your

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15:08:02 2 Honor's instruction. And when that date comes, we  
15:08:05 3 should be able to consolidate any dispute over AEO  
15:08:09 4 materials into a single submission. Again, I don't  
15:08:13 5 know, I certainly, with respect to Moog's document  
15:08:16 6 production, based on the document requests that we  
15:08:19 7 received from counsel, the volume of material that we  
15:08:23 8 anticipate producing through the document production  
15:08:27 9 process as opposed to the source code production process  
15:08:30 10 is not highly voluminous.

15:08:32 11 MAGISTRATE JUDGE MCCARTHY: Okay. Then,  
15:08:34 12 what is -- and I'll ask all of you, because I'm still,  
15:08:39 13 you know, trying to understand how this is all going to  
15:08:41 14 work. Obviously, the document production is going to  
15:08:51 15 precede anybody from the other side looking at things or  
15:08:54 16 wanting to look at things, so what is the harm of  
15:08:58 17 approving the -- the protective order in the manner  
15:09:07 18 proposed by Moog right now and then we take a look at  
15:09:11 19 how things play out in practice? If there is a huge or  
15:09:16 20 if there is a claim that there is massive  
15:09:19 21 over-designation, maybe we revise the protective order  
15:09:25 22 or somebody makes a motion to revise the protective  
15:09:27 23 order at that time. If, on the other hand it's  
15:09:32 24 relatively discrete, and with or without court  
15:09:36 25 intervention, those particular issues can be worked

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15:09:39 2 through, then maybe the protective order is good as it  
15:09:44 3 stands. What is the problem with proceeding in that  
15:09:47 4 fashion right now.

15:09:49 5 MR. MILLER: Your Honor, this is Mr. Miller.  
15:09:50 6 I'll start for the individual Defendants.

15:09:53 7 MAGISTRATE JUDGE MCCARTHY: Okay.

15:09:54 8 MR. MILLER: I think the problem is several  
15:09:56 9 fold. One, I've already identified, and I appreciate  
15:10:01 10 Ms. Andoh's representations as to Moog, but I already  
15:10:06 11 have an a problem with Skyryse and the letter they sent  
15:10:10 12 about their supposed investigation being designated  
15:11:12 13 "AEO." Secondly, I shouldn't have to disclose my work  
15:11:15 14 product in the course of my investigative analysis of  
15:11:18 15 the case by asking for permission to show each and every  
15:11:21 16 document to my clients. We're in a situation here, and  
15:11:24 17 I should mention, not every protective order, as your  
15:11:27 18 Honor well knows, even has attorney's-eyes-only as  
15:11:31 19 opposed to filing publically.

15:11:33 20 MAGISTRATE JUDGE MCCARTHY: But many of  
15:11:34 21 them do.

15:11:35 22 MR. MILLER: I know, but it's not as if it  
15:11:38 23 is a default given. But we're in a world where,  
15:11:43 24 essentially, both parties are asking for a large swath  
15:11:47 25 of documents to be excluded forever from Defendants in

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15:11:51 2 this case.

15:11:52 3 MAGISTRATE JUDGE MCCARTHY: No, no, no, no,  
15:11:53 4 no, not excluded forever, because there is the method,  
15:11:58 5 there is a mechanism in the order to challenge that.

15:12:01 6 MR. MILLER: Why should it be the  
15:12:03 7 Defendants' burden to ask for permission to see  
15:12:05 8 information which is necessary to the defense of their  
15:12:09 9 case in their own case. Again, this is not a situation  
15:12:12 10 where they have certain sub-segments like in-house  
15:12:15 11 counsel who are entitled to it. The Defendants would  
15:12:19 12 have to come hat in hand if they can't get an agreement  
15:12:23 13 voluntarily from either Skyryse or Moog to the Court  
15:12:26 14 every time and say, please, we would like to see  
15:12:28 15 evidence in a case where we are being sued for damages  
15:12:32 16 and permanent injunctive relief, which may effect their  
15:12:36 17 ability to ever obtain further employment.

15:12:42 18 MAGISTRATE JUDGE MCCARTHY: Ms. Andoh, you  
15:12:44 19 want to respond to that.

15:12:45 20 MS. ANDOH: I mean, your Honor, the reason  
15:12:48 21 why we need an AEO provision in here in the first place  
15:12:52 22 is because there was an actual taking of Moog's trade  
15:12:56 23 secrets, and we now have admitted use. So, it isn't, as  
15:13:01 24 your Honor pointed out, yes, not -- while it's true that  
15:13:06 25 not every protective order has an AEO provision,

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15:13:22 2 certainly cases like this, when we're talking about the  
15:13:24 3 entire nature of the case revolving around sensitive  
15:13:59 4 competitive information, an AEO provision is appropriate  
15:14:03 5 and necessary. And in this instance, we're trying to  
15:14:06 6 work with the individual Defendants, understanding that  
15:14:08 7 they don't have an in-house counsel to de-designate, but  
15:14:12 8 at the same time, Moog's interest in protecting its  
15:14:16 9 trade secret information from people who have admitted  
15:14:20 10 to downloading the files and Skyryse has presented  
15:14:24 11 evidence of plugging in external hard drives to view by  
15:14:47 12 other Moog employees is, it's a serious set of  
15:14:51 13 admissions that Moog needs to have protection against  
15:14:56 14 further bleeding from. And so, so, you know, we don't  
15:14:59 15 -- we think it is appropriate that, if they want to show  
15:15:02 16 materials that we designated as competitively AEO, that  
15:15:06 17 they can tell us that they think we've over-designated  
15:15:10 18 them or they otherwise need to show them. I don't think  
15:15:13 19 the work product waiver issue is one that really holds  
15:15:17 20 water here. I think they can all be done in a single  
15:15:19 21 motion, and to the extent that meet and confer doesn't  
15:15:25 22 resolve it. And I, you know, I just don't see where in  
15:15:29 23 all of this, Moog's interest in protecting its trade  
15:15:32 24 secret information is somehow automatically subsumed  
15:15:37 25 against with which the ease to which Defendants have

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15:16:00 2 access to our materials to prepare their case. There  
15:16:04 3 needs to be a balancing of interests.

15:16:06 4 MAGISTRATE JUDGE MCCARTHY: Okay.

15:16:07 5 MS. DOMINGUEZ: Your Honor --

15:16:07 6 MAGISTRATE JUDGE MCCARTHY: Does anybody  
15:16:08 7 else wish to weigh in.

15:16:10 8 MS. DOMINGUEZ: Yes, your Honor.

15:16:12 9 MAGISTRATE JUDGE MCCARTHY: And, Ms.

15:16:12 10 Dominguez, let me ask you something, and please don't  
15:16:16 11 take any offense at this question, but I'm just  
15:16:19 12 wondering. I take it you are still authorized to speak  
15:16:22 13 on behalf of Skyryse even though you're apparently going  
15:16:25 14 to be replaced.

15:16:29 15 MS. DOMINGUEZ: Yes, your Honor. So, as to  
15:16:30 16 the issues before the Court being the person more  
15:16:33 17 familiar, most familiar as between Mr. Lumish and  
15:16:38 18 myself, we thought it made sense for me to address the  
15:16:41 19 Court's questions. Obviously, though, what you flagged  
15:16:45 20 is a reason why there should be a formal -- if this  
15:16:49 21 dispute remains after this discussion, which it seems  
15:16:53 22 like it will, there should be a formal briefing process,  
15:16:56 23 I think that is true for a couple of reasons. One is  
15:16:59 24 because Skyryse took this proceeding in the spirit with  
15:17:03 25 which we thought it was intended, which is, we submitted

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15:17:07 2 fairly brief letters in comparison to what Moog  
15:17:10 3 submitted, and we intended to discuss the issues. But  
15:17:13 4 we did not view this as a formal briefing process, and,  
15:17:16 5 particularly, in light of the fact that counsel from  
15:17:21 6 Latham, Watkins will be taking over, I'll just flag, it  
15:17:24 7 does seem particularly appropriate there that if the  
15:17:28 8 issues are not resolved, that there be a briefing  
15:17:30 9 process. But I did --

15:17:32 10 MAGISTRATE JUDGE MCCARTHY: Yes. In  
15:17:33 11 fairness, I will allow that. But, again, it brings me  
15:17:36 12 back to, which we'll discuss in a few minutes, maybe in  
15:17:40 13 a case like this, this is not the most efficient way to  
15:17:44 14 proceed, but we can take that up in a few moments. So,  
15:17:47 15 I cut you off, so what else did you want to say.

15:17:51 16 MS. DOMINGUEZ: So, there was just a couple  
15:17:52 17 of comments made by both Ms. Andoh and Mr. Miller that I  
15:17:56 18 would like to address. There was suggestion that it was  
15:17:59 19 inappropriate to designate our letter of 1:30 something  
15:18:04 20 a.m., our late Tuesday night letter, I'll say that,  
15:18:08 21 those concerns were, among them, were the issues that I  
15:18:13 22 have listed, which is I have an ongoing investigation,  
15:18:16 23 we have not drawn conclusions and there could be severe  
15:18:20 24 reputational harm both to the company and to  
15:18:23 25 individuals, the letter attached an exhibit which listed



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15:18:25 2 the names of all of the employees whose laptops were  
15:18:31 3 managed. So, we do think, given the pending nature of  
15:18:34 4 the investigation and the representational harm that  
15:18:37 5 could result, we don't consider the designation of that  
15:18:41 6 letter and its exhibits as AEO to be an  
15:18:46 7 over-designation. I just wanted to address that. It's  
15:18:48 8 certainly not Skyryse's intention, as a general matter  
15:18:51 9 in this case or at all to over-designate or abuse the  
15:18:55 10 AEO designation. The other thing that I just wanted to  
15:18:58 11 note for the record, Ms. Andoh indicated there was an  
15:19:01 12 admission or a concession of trade secret use. I want  
15:19:05 13 to clarify. What we provided, in full disclosure,  
15:19:10 14 because we do want to be transparent, it was incredibly  
15:19:13 15 important, especially to the Gibson Dunn firm, that we  
15:19:17 16 provided the information we could. We provided  
15:19:19 17 information that we believe was use of information that  
15:19:21 18 either, maybe, Moog would claim as its own, it wasn't  
15:19:26 19 speaking to whether that information constitutes trade  
15:19:28 20 secrets or anything like that. I wanted to clarify that  
15:19:31 21 because Ms. Andoh did.

15:19:35 22 MAGISTRATE JUDGE MCCARTHY: Okay. I  
15:19:36 23 understand, and your position is noted. Folks, just in  
15:19:39 24 the, you know, in the time that we have. I want to  
15:19:42 25 bring this issue, the protective order issue to some

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15:19:46 2 type of closure, at least for today's purposes. So, in  
15:19:49 3 fairness, as was indicated, and, Ms. Dominguez, you  
15:19:53 4 understand it to be such, I think all counsel understand  
15:19:55 5 it to be such, I said at the outset last week or  
15:19:58 6 whenever that I do not consider these meetings to be  
15:20:03 7 formal proceedings. Well, they are formal proceedings,  
15:20:07 8 but they are not such that I can issue a binding order  
15:20:10 9 because they haven't been fully briefed. On the other  
15:20:13 10 hand, I'm going to tell you what I think today. And if  
15:20:18 11 motions are filed, I'll certainly consider them, and I  
15:20:21 12 may change my mind, but I think the current AEO  
15:20:28 13 provision, which has been proposed, when coupled with  
15:20:32 14 the mechanism for requesting de-designation or  
15:20:38 15 undesignation or challenging what somebody feels to be  
15:20:43 16 excessive AEO designations, is appropriate and  
15:20:49 17 sufficient to protect everybody's interest. And if a  
15:20:54 18 motion is filed, you're welcome to do that. I think  
15:20:58 19 that is likely the way I'll come down. But, again, you  
15:21:02 20 know, depending on what you say, I might change my mind.  
15:21:06 21 But, you know, conferences like this aren't going to  
15:21:09 22 serve anybody well unless you have a feeling for where  
15:21:16 23 my head is at right now. So, as I see it right now, and  
15:21:19 24 I have gone back and forth a little bit, but I think the  
15:21:22 25 AEO proposal currently as Moog has indicated a

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15:21:30 2 willingness to modify with respect to the individual  
15:21:32 3 Defendants is going to be appropriate. So if anybody  
15:21:38 4 wants to file a motion in that regard, we can talk about  
15:21:41 5 a briefing schedule for that.

15:21:43 6 MS. ANDOH: Your Honor, is there a  
15:21:45 7 possibility of having the putative protective order  
15:21:53 8 entered temporarily subject to motion practice so we  
15:21:57 9 don't have further delays in document production while  
15:22:14 10 the motion practice is ongoing.

15:22:16 11 MAGISTRATE JUDGE MCCARTHY: Well, anybody  
15:22:18 12 want to react to that? I think, what I thought you said  
15:22:21 13 earlier or somebody said was that you were -- your  
15:22:25 14 productions were going to abide by that until an order  
15:22:31 15 was entered anyway.

15:22:32 16 MS. ANDOH: What has happened so far is that  
15:22:34 17 the materials that have been exchanged between the  
15:22:37 18 parties, there hasn't been actual document production.  
15:22:39 19 But, for example, the letter that has gotten a lot of  
15:22:43 20 air today, it's been presumptively designated under the  
15:22:48 21 protective order. And I think that with respect to  
15:22:51 22 these materials, with those types of correspondence, I  
15:22:54 23 think the parties are willing to abide by that. I think  
15:22:58 24 it's a different issue for us to be producing actual  
15:23:01 25 evidence in the case without a protective order in

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15:23:05 2 place. That is Moog's view. And, obviously, we're not  
15:23:08 3 looking to delay the document production further. We're  
15:23:10 4 the ones who are asking for the Court to impose, you  
15:23:14 5 know, the discovery schedule that we attached. But I  
15:23:19 6 think we would be concerned about producing actual,  
15:23:23 7 actual trade secret sensitive documents without having  
15:23:27 8 some kind of a protective order that actually has been  
15:23:30 9 ordered.

15:23:31 10 MS. DOMINGUEZ: To be clear, your Honor,  
15:23:33 11 what we have suggested and we're willing to abide by was  
15:23:37 12 Skyryse was and is willing to make document productions  
15:23:41 13 designated subject to the draft order without that order  
15:23:45 14 being entered, understanding among all of the parties  
15:23:48 15 that the order would be filed until such time that a  
15:23:51 16 final order is entered.

15:23:52 17 MAGISTRATE JUDGE MCCARTHY: Does anybody  
15:23:53 18 have -- that is a statement that has just been made on  
15:23:56 19 the record, and if everyone agrees on the record that  
15:23:58 20 that is how it's going to be applied, then, I mean, de  
15:24:05 21 facto, the protective order is governing unless and  
15:24:08 22 until a different order is entered.

15:24:15 23 MR. FLUSKEY: Your Honor, could be I heard  
15:24:17 24 on that?

15:24:18 25 MAGISTRATE JUDGE MCCARTHY: Yes, go ahead.

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15:24:19 2 MR. FLUSKEY: It seems to me that is no  
15:26:22 3 different than entering an order and adding a provision  
15:26:25 4 that it is subject to the pending motion practice. I  
15:26:28 5 think Moog needs to have that comfort that we have an  
15:26:31 6 entered protective order before we begin rolling out  
15:26:35 7 trade secrets in production.

15:26:37 8 MAGISTRATE JUDGE MCCARTHY: Okay. So,  
15:26:38 9 you're talking about the what is Exhibit A to, Exhibit A  
15:26:47 10 to Exhibit 3 to the May 4 letter, is that what we're  
15:26:51 11 talking about the redlined. Rena, you're muted.

15:26:56 12 MS. ANDOH: Sorry, yes. Exhibit 3-A to  
15:27:00 13 Moog's May 4 letter to your Honor. That is a mouthful.

15:27:03 14 MAGISTRATE JUDGE MCCARTHY: Right. But  
15:27:04 15 that has a lot of redlining to it.

15:27:07 16 MS. ANDOH: That was to show the points of  
15:27:09 17 dispute that we had with Defendants. We could certainly  
15:27:14 18 provide a clean version of it to be provisionally  
15:27:18 19 entered subject to motion practice.

15:27:20 20 MAGISTRATE JUDGE MCCARTHY: All right. All  
15:27:23 21 right. I'm going to do that. I'm going to do that.  
15:27:25 22 So, give me a clean copy. Just so you know, as I  
15:27:28 23 indicated, I'm out of town tomorrow, and I'm reachable.  
15:27:33 24 Matt will check things, I want a provision in there that  
15:27:38 25 it is a provisional protective order subject to further

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15:27:42 2 motion practice and we'll docket it. Everybody reserves  
15:27:47 3 their right to say I should come to a different  
15:27:50 4 conclusion. But at least so you can all start meeting  
15:27:53 5 your document production deadlines. Not everybody will  
15:27:58 6 be happy with that, but I think we just have to move on.

15:28:04 7 Now, let me ask you, all of you, again, I'm  
15:28:10 8 -- I think I'm finding that what works in other cases  
15:28:14 9 may not work in this case in terms of these informal  
15:28:18 10 conferences without going directly to motion practice.  
15:28:23 11 I really hate to do that, because I think a lot of  
15:28:26 12 things can be -- can be worked out. But, anybody, I'll  
15:28:32 13 throw it back to all of you, I'm not going to ask for a  
15:28:37 14 majority vote or whatever. But how do you want to  
15:28:40 15 proceed?

15:28:44 16 MS. DOMINGUEZ: Your Honor, if I could, this  
15:28:45 17 is one topic that I don't think I should speak. The  
15:28:48 18 going forward practice will be, of course, Mr. Lumish  
15:28:52 19 and Mr. Gross' concern, so I'll not give an answer, if  
15:28:58 20 that is okay with your Honor, on this particular  
15:29:00 21 question.

15:29:01 22 MAGISTRATE JUDGE MCCARTHY: Okay.

15:29:04 23 MR. LUMISH: I'm happy to respond, your  
15:29:07 24 Honor.

15:29:07 25 MAGISTRATE JUDGE MCCARTHY: Go ahead, Mr.

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15:29:08 2 Lumish. By the way, in looking at the docket, you have  
15:29:11 3 a motion pro hac vice pending.

15:29:15 4 MR. LUMISH: I do, your Honor. And if you  
15:29:17 5 prefer I not speak --

15:29:18 6 MAGISTRATE JUDGE MCCARTHY: No. Unless  
15:29:19 7 somebody else has a major issue with it, I don't have a  
15:29:22 8 problem with your speaking. I think, Mr. Gross, you  
15:29:25 9 have a similar motion pending, is that right.

15:29:29 10 MR. GROSS: Actually, your Honor, I happen  
15:29:30 11 to be admitted to the court from a prior time.

15:29:34 12 MAGISTRATE JUDGE MCCARTHY: I'm sorry.

15:29:36 13 MR. GROSS: I'm the one that sponsored Mr.  
15:29:39 14 Lumish.

15:29:39 15 MAGISTRATE JUDGE MCCARTHY: Somebody, one  
15:29:40 16 of your other colleagues.

15:29:42 17 MR. GROSS: That's true.

15:29:43 18 MAGISTRATE JUDGE MCCARTHY: Okay, fine.  
15:29:44 19 Mr. Lumish, I don't have a problem with your speaking.

15:29:49 20 MR. LUMISH: Thank you, your Honor. What I  
15:29:50 21 was going to say, to the extent it's your Honor's normal  
15:29:53 22 practice to have informal conferences, we would  
15:29:56 23 certainly appreciate them as well. And if you think  
15:30:09 24 it's not working, we're happy to resort to whatever you  
15:30:12 25 prefer. But, if the normal practice is for your Honor

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15:30:15 2 to do this, we would be in favor as a way to hopefully  
15:30:18 3 cut through some of these issues.

15:30:20 4 MAGISTRATE JUDGE MCCARTHY: I guess, for  
15:30:21 5 example, I just had five patent cases that went on for  
15:30:27 6 several years involving probably 30 attorneys, I don't  
15:30:32 7 know. But they would come in monthly and discuss, I'd  
15:30:37 8 ask for letters, and then we would have monthly  
15:30:40 9 conferences and we had a fair amount of success in  
15:30:44 10 avoiding motion practice, so I would like to continue  
15:30:47 11 that process, but I think I need to carve out those  
15:30:54 12 situations in which something is really time sensitive  
15:30:59 13 and one party or the other thinks that they want a  
15:31:03 14 formal ruling, then, I guess, I'll leave the door open  
15:31:06 15 to that. Otherwise, I prefer if we can to try to, you  
15:31:12 16 know, get together by Zoom or teleconference, or, hey,  
15:31:15 17 if any of you want to come into Buffalo, and it stopped  
15:31:19 18 snowing and I love to see you. You know, I think those  
15:31:23 19 are -- those are helpful as well, but, so maybe we'll  
15:31:28 20 leave it at that. We'll have periodic conferences, but  
15:31:32 21 if anybody feels, given a certain time constraints or  
15:31:35 22 for whatever other reason, they need to make a motion,  
15:31:39 23 you should feel free to do so. And if it requires  
15:31:44 24 expedited briefing or whatever, we'll set that up.

15:31:51 25 MS. ANDOH: Your Honor, we appreciate having



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15:31:52 2 that -- sorry. On behalf of Plaintiff, I think we would  
15:31:55 3 appreciate having that dual track. I think we do find  
15:31:58 4 these conferences with your Honor to be helpful and  
15:32:01 5 certainly getting your Honor's view on the issues. But  
15:32:04 6 it also, particularly when we're talking about things  
15:32:07 7 like the protective order or things like this inspection  
15:32:09 8 protocol, they can really wind up being -- there could  
15:32:14 9 be a blockage, sort of a cascade of events that happens  
15:32:17 10 as a result. And so there needs to be the ability to  
15:32:22 11 dual track, you know, in those instances. If it's  
15:32:26 12 something that is not, you know, that is an outstanding  
15:32:29 13 dispute over a document, for example, that, you know, we  
15:32:31 14 want to use in a deposition, but that deposition is  
15:32:33 15 scheduled to happen in a week, you know, we may need to  
15:32:36 16 be able to have a procedure by which we can have  
15:32:41 17 resolution of that issue, because the deposition needs  
15:32:44 18 to happen. There are these kinds of issues that can  
15:32:48 19 have real effects that can wind up having a massive  
15:32:52 20 effect on a schedule.

15:32:53 21 MAGISTRATE JUDGE MCCARTHY: I agree, I  
15:32:54 22 agree. You know, if we have the two track, we can, at  
15:32:58 23 the time, set up periodic conferences down the road,  
15:33:00 24 and, hopefully, work through a lot of things. But, if  
15:33:03 25 anybody feels they need to make a motion on a particular

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15:33:06 2 issue, if it is a non-dispositive issue, you make it to  
15:33:10 3 me. I won't speak for Judge Vilardo as to how he wants  
15:33:14 4 things handled, but, to the extent it's a dispositive  
15:33:17 5 motion, it's got to go to him. So, with my indication  
15:33:23 6 that I am going to sign the protective order, which is  
15:33:30 7 Exhibit 3-A to your May 4 letter, with leave to revisit  
15:33:35 8 that, what else do we need to address today.

15:33:40 9 MS. ANDOH: The other really, sort of, I  
15:33:42 10 won't call it hair-on-fire emergency, but the other  
15:33:45 11 thing that is in desperate need of resolution as the  
15:33:49 12 threshold, which is the inspection protocol, which is  
15:33:52 13 basically a procedure that is set for materials not  
15:33:55 14 being produced in the sort of standard discovery  
15:33:59 15 document exchange manner would be handled. There is a  
15:34:03 16 massive divide between Plaintiff and Defendant. Skyryse  
15:34:07 17 specifically, with respect to whether or not Plaintiff  
15:34:13 18 would have access to forensic images to be able to  
15:34:17 19 conduct its own investigation as opposed to having to  
15:34:19 20 rely on either an independent expert who doesn't  
15:34:23 21 necessarily have specific expertise in the area is  
15:34:25 22 necessary to be able to make these assessments. And,  
15:34:29 23 also, Skyryse has hired forensic experts. I would turn  
15:34:34 24 this over to my colleague, Lai Yip, if your Honor wants  
15:34:40 25 an overview of the pending dispute. It's actually quite

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15:34:43 2 substantial, because, as of right now, the independent  
15:34:47 3 forensic firm that was retained by the parties, is  
15:35:55 4 currently holding 23 devices from the individual  
15:35:59 5 Defendants, plus, I think it's four, two devices or  
15:36:04 6 three devices and two hard drives, maybe, from Skyryse.  
15:36:08 7 And there are 37 additional images that are currently  
15:36:11 8 being taken by Skyryse that we believe probably needs to  
15:36:15 9 be turned over to IBS, so the independent vendor and  
15:36:21 10 then there is, so, basically, when that happens, there  
15:36:24 11 is a massive dispute of what is going to happen to those  
15:36:27 12 devices and how they are going to be inspected and what  
15:37:05 13 access the parties are going to have to the contents of  
15:37:08 14 those devices. It's really the heart of the case  
15:37:11 15 because what we know so far from disclosures from  
15:37:15 16 Skyryse, and also what we know from our own  
15:37:18 17 investigation that was done on Moog systems, is that due  
15:37:20 18 to the volume and types of these files, the access,  
15:37:25 19 reading and copying of files is all electronic and these  
15:37:29 20 devices are the devices that were used to conduct that  
15:37:33 21 copying and use. And so with that, I would propose that  
15:37:41 22 my colleague Lai Yip be permitted to address the Court  
15:37:46 23 with regard to the specifics of Moog's proposal and the  
15:37:50 24 difference with Skyryse.

15:37:51 25 MAGISTRATE JUDGE MCCARTHY: So, you're

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15:37:52 2 referring to page six Roman numeral III of your May 4  
15:37:57 3 letter.

15:37:58 4 MS. ANDOH: Sorry, I'm scrolling back up to  
15:38:01 5 the beginning here. It would be.

15:38:05 6 MAGISTRATE JUDGE: Heading "parties ongoing  
15:38:06 7 dispute regarding inspection protocol."

15:38:10 8 MS. ANDOH: Yes, that would be it, your  
15:38:12 9 Honor.

15:38:12 10 MAGISTRATE JUDGE MCCARTHY: Yeah. Okay.  
15:38:17 11 Ms. Yip.

15:38:18 12 MS. YIP: Yes, thank you, your Honor. So,  
15:54:18 13 as Ms. Andoh stated, a lot of devices have already been  
15:54:23 14 turned over to the neutral vendor and more to come. So,  
15:54:27 15 in the end, we could have up to 60 devices that are in  
15:54:31 16 the possession of the neutral vendor. And our problem  
15:54:35 17 is, to this day, we really don't know exactly what Moog  
15:54:40 18 data is on these very devices. These devices are  
15:54:47 19 essentially a black box for us right now because we have  
15:54:51 20 zero access to them. So what we have, if Defendants are  
15:54:54 21 in possession of the evidence of misappropriation and  
15:54:57 22 theft, spoliation, and we don't. And we need a way to  
15:55:00 23 be able to inspect those devices to determine, for  
15:55:04 24 example, what Moog data is on them. This is  
15:55:07 25 foundational for the case. How and when Moog data was

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15:55:11 2 transferred on or off of devices, how Moog data has been  
15:55:16 3 used and misappropriated and what spoliation has  
15:55:20 4 occurred. And we need the devices to prosecute our  
15:55:24 5 claims. For instance, Ms. Dominguez has made, today, a  
15:55:27 6 lot of claims about what has been found, what has not  
15:55:30 7 been found, overbreadth of search terms, and we don't  
15:55:33 8 have a way right now to vet those claims because we have  
15:55:36 9 zero access to the devices. So, the dispute really  
15:55:43 10 revolves around Defendants voicing some prior concern  
15:55:45 11 about giving Moog access to devices that may contain  
15:55:49 12 confidential privileged or private information, but we  
15:55:53 13 believe our inspection protocol more than adequately  
15:55:57 14 addresses those concerns while permitting Moog and the  
15:56:01 15 Court the access that is absolutely necessary to be able  
15:56:05 16 to uncover the truth, the facts in this case. So, I can  
15:56:11 17 provide some description of our protocol to give you the  
15:56:14 18 context, your Honor.

15:56:15 19 MAGISTRATE JUDGE MCCARTHY: I'm looking at  
15:56:17 20 the May 4 letter now, which refers me back to the April  
15:56:20 21 27th letter at page 7. Is that right? And, again,  
15:56:24 22 counsel, I apologize, well, I don't apologize, I'm doing  
15:56:27 23 the best I can here, but trying to get my arms around  
15:56:31 24 all of these issues. So I'm going to look at page 7 of  
15:56:40 25 that letter. So, basically, you're saying that you need

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15:56:46 2 to not just take their word for it, but you need to be  
15:56:49 3 able to see the devices yourself rather than just  
15:56:53 4 relying on what the -- what somebody else says about  
15:56:59 5 them, is that right.

15:57:01 6 MS. YIP: Absolutely, you put it so well,  
15:57:04 7 your Honor.

15:57:04 8 MAGISTRATE JUDGE MCCARTHY: Flattery will  
15:57:08 9 get you everywhere.

15:57:10 10 MS. YIP: Yes, so our letter submitted on  
15:57:52 11 May 4 essentially references a prior letter that we  
15:58:47 12 submitted, which talks about the dispute in great  
15:58:49 13 detail. And we understand that is a lot of materials,  
15:58:52 14 so what I'm hoping I can do is be able to give you the  
15:58:56 15 highlights and greatest hits of what is the dispute.  
15:58:59 16 And, so, under our proposed protocol, Moog does not get  
16:01:10 17 physical possession of the Defendants' devices. We  
16:01:12 18 don't even get physical possession of the forensic  
16:01:17 19 images of the devices. Instead, the physical possession  
16:01:21 20 is always with the neutral vendor. The only thing we  
16:01:24 21 get to do is log on the neutral vendor's computer to  
16:01:29 22 view the forensic images. We're not allowed to edit the  
16:01:33 23 forensic images and we're not allowed to copy anything  
16:01:37 24 from the forensic images. And while we're reviewing the  
16:01:56 25 images, we are being monitored by the neutral vendor to

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16:02:03 2 ensure the security of their data. And, in fact, there  
16:02:08 3 is even a video recording provision in the protocol and  
16:02:32 4 we believe that all of these measures more than  
16:02:35 5 adequately addresses the security and confidential  
16:02:39 6 concerns that Skyryse has raised. Moreover, only Moog's  
16:02:44 7 outside counsel and experts can view this information  
16:02:48 8 that is posted and housed by the neutral vendor. Moog's  
16:02:53 9 in-house counsel are not going to access it. Moog's  
16:02:56 10 employees are not going to access it nor anyone else at  
16:02:59 11 Moog. And Moog's outside counsel are not allowed to  
16:03:02 12 share the information or discuss it with in-house  
16:03:04 13 counsel or employees of Moog or anyone else at Moog.  
16:03:07 14 Obviously, this is all subject to, if, at some point, if  
16:03:11 15 we feel like certain documents in the forensic images  
16:03:14 16 should be produced in the normal course and designated  
16:03:53 17 appropriately and there are provisions in the protocol  
16:03:55 18 to address that mechanism, but as an initial matter,  
16:03:58 19 this would be limited to outside counsel and expert's  
16:04:01 20 eyes only. And under the protocol, the forensic images  
16:04:06 21 are designated by default in this way; outside counsel  
16:04:10 22 and expert's eyes only. Moreover, before we ever even  
16:04:14 23 get to review the forensic images using these monitoring  
16:04:19 24 security measures and so forth, the Defendants will have  
16:04:21 25 an opportunity to review the forensic images for

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16:04:24 2 privileged information. And the individual Defendants  
16:04:27 3 who have raised a privacy concern will be able to review  
16:04:30 4 the forensic images for any personally private  
16:04:33 5 information and have this material excised from the  
16:04:38 6 forensic image before our outside counsel and experts  
16:04:41 7 will get access to them. And, in fact, due to the  
16:04:45 8 provision in the protocol that permits this privacy  
16:04:49 9 review, the individual Defendants no longer have an  
16:04:53 10 objection to our protocol and have now taken a neutral  
16:04:57 11 position on it. As we understood it, when the parties  
16:05:01 12 were discussing the use of a neutral vendor early on,  
16:05:05 13 the point of engaging in the neutral vendor was so that  
16:05:08 14 we do not get physical possession of the Defendants'  
16:05:11 15 devices. And under our inspection protocol, that is  
16:05:14 16 exactly what happened. We don't get physical possession  
16:05:17 17 of the devices. We don't get physical possession of the  
16:05:21 18 forensic images. All we get is supervised access to the  
16:05:25 19 forensic images, which stay in the possession of the  
16:05:28 20 neutral vendor.

16:05:29 21 Since your Honor has recently handled a big  
16:05:32 22 slate of patent cases, perhaps this next analogy may  
16:05:39 23 resonate a bit. From my perspective, the mechanics of  
16:05:43 24 this process are not very different from typical source  
16:06:07 25 coding inspections that occur in patent cases. In



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16:06:11 2 patent cases, oftentimes you have a vendor that houses a  
16:06:17 3 source code and parties get to go and look at the source  
16:06:20 4 code through this vendor under all kinds of monitoring  
16:06:25 5 provisions. The primary difference in this case,  
16:06:27 6 however, is that it's not just source code at issue.  
16:06:30 7 What is at issue are entire devices, entire forensic  
16:06:34 8 images. Because of the breadth of the scope of what's  
16:06:37 9 been taken, which is, at least over one point, three  
16:06:41 10 million files, the evidence of trade secret  
16:06:44 11 misappropriation could be anywhere in these devices  
16:06:47 12 could be in source code in presentation in drawings in  
16:06:51 13 design documents, architecture documents, Word  
16:06:54 14 documents, metadata regarding the device that tells you  
16:06:57 15 when the device was connected to other devices, what  
16:07:00 16 data was transferred to other devices comes from some  
16:07:04 17 other devices and when. And the evidence of spoliation  
16:07:08 18 can, likewise, be anywhere in these devices. Based on  
16:07:12 19 what Skyryse and the Gibson Dunn firm have told us, we  
16:07:17 20 have reason to believe that the spoliation in this case  
16:07:19 21 is very extensive. We believe that the security  
16:07:24 22 measures that we have put in place in our proposed  
16:07:29 23 protocol addresses all of Skyryse's concerns. And we  
16:07:32 24 know that they address the individual Defendants'  
16:07:35 25 concerns.

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16:07:36 2 Now, in terms of what we find problematic  
16:07:39 3 with Skyryse's proposed protocol, their protocol  
16:07:43 4 basically blocks all of our access. Under their  
16:07:47 5 protocol we get zero access to the forensic images. All  
16:07:51 6 we get is to provide search terms to the neutral vendor,  
16:07:56 7 which must be agreed to by Skyryse in advance. The  
16:08:00 8 neutral vendor then runs those search terms, provides  
16:08:05 9 the resulting files to the Defendants for a privilege  
16:08:07 10 review, and we get whatever is left over after their  
16:08:10 11 privilege review. We would then review those documents  
16:08:13 12 and determine if further searches are needed and then  
16:08:16 13 the process begins again and we do this again and again  
16:08:19 14 and again. This approach will not only take a very long  
16:08:23 15 time, way more time than we have to spare in this case  
16:08:28 16 across 50, nearly 60 devices. It will be totally  
16:08:34 17 ineffectual in uncovering the facts and the truth in  
16:08:37 18 this case. For example, searching for search terms will  
16:08:43 19 not enable us to fully uncover the spoliation, the  
16:08:48 20 extensive spoliation that we believe has occurred on  
16:08:51 21 these devices. To find spoliation, searching for words  
16:08:57 22 is not enough. You have to look at underlying metadata,  
16:09:00 23 which will indicate where data has been deleted.  
16:09:04 24 Second, as I mentioned earlier, at least over 1.3  
16:09:07 25 million files have been stolen, which covers a huge

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16:09:11 2 diversity of file types and projects and many of these  
16:09:15 3 files are not chiefly composed of words that can be  
16:09:19 4 searched for such as drawings, designs, schematics,  
16:09:24 5 executables, images models diagrams, there are  
16:09:28 6 hand-drawn figures that are at issue, object files and  
16:09:31 7 so forth. And as another example, unrelatedly, much of  
16:09:38 8 the use and Ms. Andoh touched on this earlier much of  
16:09:41 9 the use is not literal copying at all like taking an  
16:09:45 10 image and copying it over from one directory to another.  
16:09:48 11 It's adapting Moog's processes. Their data flows, their  
16:09:53 12 algorithms, their structure, their architecture. Again,  
16:09:59 13 searching for words will not be sufficient to find  
16:10:02 14 evidence of this type of use and theft. So, from our  
16:10:30 15 view, to adequately uncover the kinds of  
16:10:34 16 misappropriation that I have just identified, you really  
16:10:37 17 need a human being to look at the file, to compare them  
16:10:41 18 side by side and to draw from their experience and their  
16:10:44 19 expertise and their judgment to follow the truth of  
16:10:48 20 misappropriation that we believe has taken place. You  
16:10:52 21 can't just do this kind of brute force mechanical search  
16:10:56 22 for words, which is what Skyryse is proposing. That is  
16:11:01 23 not going to work here. What we believe is that what we  
16:11:06 24 need to do here is a much more sophisticated nuanced  
16:11:10 25 analysis to be able to uncover the full extent of the

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16:11:15 2 theft and the misappropriation and the spoliation and  
16:11:17 3 the violations, frankly, of the March 11th court order  
16:11:22 4 the temporary restraining order. One thing is that  
16:11:27 5 Skyryse has claimed, in this case, that, in connection  
16:11:31 6 with this dispute, that what we have proposed is not  
16:11:35 7 standard, "standard." And as a threshold matter, we  
16:11:41 8 disagree that there is a standard here as Skyryse has  
16:11:45 9 described it. In our previous submission that is  
16:11:49 10 referred to in our letter from yesterday, we cited a  
16:11:53 11 number of cases showing that our protocol is very  
16:11:58 12 reasonable. But, even if it were the case that our  
16:12:01 13 protocol were not "standard," this is not a "standard"  
16:12:07 14 case. We have over 1.3 files that have been taken that  
16:12:12 15 we are presently aware of, there could be more, and,  
16:12:15 16 perhaps, even more importantly, the Defendants have made  
16:12:18 17 admissions that essentially amount to spoliation. And  
16:12:24 18 spoliation here is so serious that Skyryse's outside  
16:12:27 19 counsel felt the need to request an emergency  
16:12:31 20 conference, Mr. /OT-er, to discuss it. And so we  
16:12:34 21 believe that, based on what we've been told so far, as I  
16:12:37 22 said earlier, the spoliation is very serious and the  
16:12:40 23 case law makes very clear that the permitting the  
16:12:42 24 Plaintiff direct access to foreign images, to devices in  
16:12:46 25 a trademark secrets case where spoliation has occurred

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16:12:50 2 is very appropriate.

16:12:51 3 And the last comment that I'll make is one  
16:12:54 4 of the reasons why inspection protocol is very necessary  
16:12:58 5 in this case is timing. The expedited discovery  
16:13:02 6 schedule and the preliminary injunction briefing  
16:13:05 7 schedule has been thrown off course by the conduct that  
16:13:09 8 has occurred so far, and Defendant's protocol, which is  
16:13:15 9 very iterative and puts an intermediary between us, Moog  
16:13:20 10 and the evidence that we need to look at with respect to  
16:13:28 11 use and misappropriation and so forth, it will take too  
16:13:31 12 long. There is too many iterations, too many cycles to  
16:13:37 13 go through. And to have to go through the intermediary  
16:13:40 14 will not be workable in this case. We need to cut  
16:13:44 15 through all of that and essentially to have Skyryse make  
16:13:47 16 good on its promise to be open and transparent and  
16:13:51 17 permit outside counsel and experts to inspect the  
16:13:57 18 consents directly.

16:13:58 19 MAGISTRATE JUDGE MCCARTHY: Okay. Before I  
16:13:59 20 hear from counsel for Skyryse, correct me if I'm wrong,  
16:14:03 21 you said that Mr. Miller takes no position on your  
16:14:06 22 protocol. Is that right, Mr. Miller.

16:14:11 23 MR. MILLER: Your Honor, that is correct.  
16:14:14 24 Additionally, the privacy screens that, as I indicated  
16:14:58 25 in my letter submission, satisfies the concern we have

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16:15:01 2 with Moog's proposal as it stands, we no longer have any  
16:15:04 3 position vis-à-vis Moog's or Skyryse's protocol.

16:15:08 4 MAGISTRATE JUDGE MCCARTHY: Okay. And  
16:15:09 5 before I hear from counsel for Skyryse just on the  
16:15:14 6 protocol, I know time is of the essence, but what in  
16:15:19 7 particular is time sensitive about the need to get a  
16:15:23 8 written protocol in place? Is that going to affect your  
16:15:29 9 May 19th production deadline.

16:15:34 10 MS. YIP: Yeah, so, it's absolutely critical  
16:15:37 11 to keeping our revised schedule on track that we get the  
16:15:44 12 inspection protocol entered as soon as possible. As Ms.  
16:15:48 13 Andoh intimated before, everything flows from this.  
16:15:53 14 It's a big cascade. And if the inspection protocol is  
16:15:57 15 in place, that means we don't get access to the devices  
16:16:00 16 that are turned over. We don't get access to any of the  
16:16:03 17 nearly 30 devices that are in the possession of the  
16:16:06 18 neutral vendor right now. And we do not get access to  
16:16:09 19 the additional 37 devices or of the forensic images of  
16:16:13 20 those devices that we feel we are entitled to as well.  
16:16:16 21 As Ms. Andoh also said earlier, that is the heart of our  
16:16:20 22 case, and that is why we believe Skyryse is making -- is  
16:16:26 23 interjecting so many objections to us being able to  
16:16:29 24 access them, because they are the heart of our case.  
16:16:32 25 So, it is absolutely, to answer your question, your

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16:16:35 2 Honor, it's absolutely critical for us to get that  
16:16:38 3 entered as soon as possible.

16:16:41 4 MS. ANDOH: Your Honor, with respect to --

16:16:42 5 MAGISTRATE JUDGE MCCARTHY: Go ahead.

16:16:42 6 MS. ANDOH: Sorry. With respect to the May  
16:16:44 7 19 question.

16:16:45 8 MAGISTRATE JUDGE MCCARTHY: Yeah.

16:16:46 9 MS. ANDOH: The May 19th deadline that is in  
16:16:49 10 place has specifically to do with document production  
16:16:54 11 outside of the protocol, but to Lai's point, there are a  
16:16:57 12 number of other deadlines we would not want to take  
16:17:00 13 depositions until the analysis of those images is  
16:17:03 14 complete. A lot of the evidence that we expect to want  
16:17:22 15 to cover with witnesses is going to come from that  
16:17:25 16 inspection, so even though the May 19 deadline is not  
16:18:56 17 directly implicated by the resolution of this inspection  
16:19:00 18 protocol issue, a number of other deadlines will be  
16:19:02 19 impacted if the inspection protocol issue is not  
16:19:05 20 resolved.

16:19:07 21 MS. YIP: And if I could -- sorry, your  
16:19:08 22 Honor. Go ahead.

16:19:09 23 MAGISTRATE JUDGE MCCARTHY: I was going to  
16:19:10 24 say, you know, I'm trying to triage here, and I need to  
16:19:14 25 have in mind what absolutely needs to be decided first

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16:19:20 2 and then a method for deciding that, whether it is a  
16:19:23 3 motion or whatever. So, I've already, you know, I've  
16:19:28 4 already indicated that the one order is going to be in  
16:19:31 5 place. I'm going to hear from counsel for Skyryse on  
16:19:36 6 this. I'm not, unless somebody says, yeah, you can do  
16:19:41 7 it, I don't think I'm in a position to say one protocol  
16:19:45 8 or the other goes in place today. So, I'm going to give  
16:19:49 9 the parties a brief opportunity to submit motion papers  
16:19:54 10 on it and I'll decide it as soon as I can. But that is  
16:19:59 11 why I asked, does May 19th hinge on this, and I think  
16:20:04 12 the answer is no.

16:20:06 13 MS. YIP: If I could clarify on that point?  
16:20:09 14 So the May 19th deadline does hit on a number of things,  
16:20:14 15 one is the document production that Ms. Andoh hit on,  
16:20:17 16 but the other is to finish the privilege review that  
16:20:20 17 Skyryse had asked for on the devices that are already in  
16:20:23 18 the possession of the neutral vendor, a privilege review  
16:20:28 19 is going to take some time. And what we had proposed is  
16:20:32 20 that by May 19th, that Skyryse finishes that review so  
16:20:36 21 the devices that are with the neutral vendor can be made  
16:20:39 22 accessible to us. So, ideally on May 19th, our outside  
16:20:45 23 counsel and experts will be able to view at least the  
16:20:50 24 devices that the neutral vendor has now. If we're going  
16:20:53 25 to keep the follow on deadlines relating to depositions,



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16:21:21 2 discovery and so forth, it is absolutely critical that

16:21:24 3 we get access to those devices as early as possible.

16:21:27 4 And if we don't make sure that the privilege review is

16:21:31 5 on track so it can be completed by May 19th, it could

16:21:35 6 adversely impact the rest of the schedule, so I wanted

16:21:38 7 to make that clarification.

16:21:40 8 MAGISTRATE JUDGE MCCARTHY: Okay. I

16:21:41 9 understand. And May 19th, today is -- what is today?

16:21:44 10 Today is May 5th, Cinco de Mayo. Happy Cinco de Mayo,

16:21:49 11 everybody. So May 19th is a week from Thursday. Now,

16:21:55 12 as I indicated, I am out next week. I'm out beginning

16:22:01 13 tomorrow and I'm out of Chambers returning on the 16th,

16:22:05 14 but I am working remotely, not tomorrow, but Monday,

16:22:11 15 Tuesday, Thursday and Friday of next week, so I'll have

16:22:14 16 access to everything, so I will devote time to it. But

16:22:18 17 I just need to know, my sense is you would like

16:22:22 18 something decided by the 16th, or, well, as soon as

16:22:27 19 possible. It's on my front burner, but I'm not going to

16:22:32 20 decide it today. That much I can tell you, because I

16:22:34 21 don't think that would be fair to anybody. But having

16:22:37 22 said that, I will hear from whoever wishes to speak on

16:22:41 23 behalf of Skyryse or, Ms. Dominguez, do you want to

16:22:45 24 defer? I don't know if Mr. Lumish or Mr. Gross can

16:22:49 25 speak to that today or what do you want to do?

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16:22:53 2 MS. DOMINGUEZ: I can speak to it or if Mr.  
16:22:56 3 Lumish or Mr. Gross wants to speak to it, I'll give them  
16:22:59 4 the floor.

16:23:42 5 MR. LUMISH: Your Honor, I'm happy to make a  
16:23:44 6 few comments and invite Ms. Dominguez to clean up  
16:23:47 7 whatever I haven't said that is important and based on  
16:23:51 8 her superior experience with the case. I would actually  
16:23:54 9 like to start with one of the comments that Ms. Yip made  
16:23:58 10 that is terribly concerning. With trade secret cases,  
16:24:01 11 one of the things that is supposed to happen is  
16:24:03 12 discovery is supposed to guard against the notion that  
16:24:06 13 they can just hire an expert who can then deconstruct  
16:24:10 14 all of the information from a defendant and say, oh, I  
16:24:13 15 can find a trade secret in here. And what she is asking  
16:24:16 16 you for is 60 devices full unfettered access for an  
16:24:22 17 expert to go through with some effort to pull out  
16:24:26 18 privileged material only, and then reconstruct and  
16:24:30 19 deconstruct in a revision history way, oh, there is our  
16:24:53 20 trade secrets, even though there is no copying, and we  
16:24:57 21 can't actually see our code or any reference to Moog in  
16:25:02 22 it, and that is exactly how trade secret discovery is  
16:25:05 23 supposed to go. I start there, but the source code  
16:25:08 24 analogy that your Honor was given from patent cases is  
16:25:11 25 actually and apt one for why you should deny their

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16:25:16 2 protocol, because what happens in a source code  
16:25:18 3 inspection is the source code that is at issue for the  
16:25:20 4 accused functionality is put on an inspection computer  
16:25:24 5 and the experts are given access to that. They are not  
16:25:27 6 given access to all of the source code in the company,  
16:25:29 7 which is obviously extremely proprietary and valuable to  
16:25:57 8 the defendant. They are not given access to the all of  
16:25:59 9 the information in the company, which I can only surmise  
16:26:03 10 60 devices is going to give them, essentially, you know,  
16:26:06 11 an unfettered window into the entire company and all of  
16:26:09 12 our trade secrets and all of our information that has  
16:26:12 13 absolutely no bearing on this case. And so, if you're  
16:26:15 14 going to look at it like a source code inspection, then  
16:26:18 15 our protocol is the one that gets closer, which is have  
16:26:23 16 pulled out of these devices the things that are  
16:26:26 17 potentially relevant to the case and let them inspect  
16:26:28 18 those. And it's not just the key words. The argument  
16:26:31 19 was made, well, it's just a word. No, the copy word  
16:26:36 20 leads to a file and the file can be inspected by the  
16:26:39 21 human being and analyzed from that point. And, so, I  
16:26:44 22 like the source code analogy because I think it actually  
16:26:47 23 proves our point and would actually take way more time,  
16:26:50 24 not the point that counsel argued, it would take more  
16:26:54 25 time to have 60 devices in their entirety that would

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16:26:59 2 have to be the subject of the analysis by them and  
16:27:03 3 subjected by analysis by us as well and as opposed,  
16:27:17 4 something that has been reduced to more likely to be  
16:27:21 5 narrow files and component of those drives.

16:27:23 6 Last point was on spoliation. Counsel said  
16:27:26 7 that the metadata needs to be looked for. Metadata is  
16:27:30 8 words and dates and artifacts and things like that they  
16:27:34 9 can identify and we can negotiate and use as potential  
16:27:37 10 search terms or search strings to try and find what they  
16:27:41 11 are looking for. But the notion they need to have a  
16:27:45 12 human being going through the metadata with unfettered  
16:27:49 13 access doesn't really add up to that, either.

16:28:06 14 So, those are my reactions to what I heard,  
16:28:08 15 but I'm sure Ms. Dominguez has more, based on the actual  
16:28:11 16 specifics with our protocol, which I'm less familiar  
16:28:14 17 with.

16:28:15 18 MAGISTRATE JUDGE MCCARTHY: Before I hear  
16:28:16 19 from Kate, I will, just one thing, and, again, I'm  
16:28:20 20 obviously not deciding any aspect of the merits of this  
16:28:23 21 case. I won't, at any point in this case, that is not  
16:28:28 22 my job, but, you know, I've reviewed the pleadings and  
16:28:32 23 one of the things that kind of jumps out at me is,  
16:28:35 24 apparently, material has been deleted. And they  
16:28:44 25 don't -- I mean, if I were representing Moog, and I'm

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16:28:48 2 not, but there is some appeal to the argument, we don't  
16:28:53 3 even know what they took because it's all gone. So, you  
16:28:59 4 know, I've got to keep that in mind as well.

16:29:02 5 Ms. Dominguez, I'll hear from you.

16:29:04 6 MS. DOMINGUEZ: Sure. So on that, and I  
16:29:08 7 think, your Honor, it ties into something I found  
16:29:10 8 troubling as well about counsel for Moog's presentation  
16:29:16 9 there. She started by making really broad and sweeping  
16:29:20 10 conclusions, unwarranted conclusions based on an  
16:29:23 11 investigation that is still under way. I've tried to be  
16:29:26 12 clear and Mr. Krevitt tried to be clear last week that  
16:29:31 13 when we saw an indication of a problem, we felt it was  
16:29:34 14 incumbent upon us to come to the court early. The  
16:29:37 15 investigation is not concluded and we do not have reason  
16:29:40 16 to believe that all of these 37 laptops have what Ms.  
16:29:45 17 Yip called a spoliation problem. The purpose of the  
16:29:48 18 investigation is to find out if indeed, among the  
16:29:52 19 deletions, were relevant information, and if indeed  
16:29:57 20 relevant information is lost as to preserved on the  
16:30:01 21 network drives, which are backed up daily and have  
16:30:06 22 indicated no real possibility of loss. And I wanted to  
16:30:11 23 bring that up because it gives rise to this  
16:30:13 24 unprecedented fishing expedition where counsel thinks 37  
16:30:18 25 images should be turned over. That would be

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16:30:20 2 unprecedented. There is no reason to depart from the  
16:30:23 3 normal course production, which is that counsel looks  
16:30:27 4 for a responsive information, responsive information is  
16:30:30 5 produced. That is what has been happening. We, in  
16:30:34 6 fact, made another production today. It went out in the  
16:30:37 7 course of this hearing. So, I did find it troubling  
16:30:40 8 that counsel seeks to make sweeping conclusions based on  
16:30:43 9 an investigation that is not concluded yet, and then to  
16:30:46 10 rely on those sweeping conclusions to go on this  
16:30:49 11 unprecedented fishing expedition where they want to sort  
16:30:52 12 through the images of 37 laptops, which are certain to  
16:30:57 13 include information far beyond what is relevant to this  
16:30:59 14 case.

16:31:00 15 MAGISTRATE JUDGE MCCARTHY: Okay. Counsel,  
16:31:02 16 here is what I'm going to suggest. You know, you've  
16:31:06 17 submitted, everybody submitted a lot of correspondence  
16:31:09 18 with proposals and so forth. I don't -- this is not --  
16:31:13 19 this particular issue is not one that I can say, okay,  
16:31:19 20 Moog's protocol is going to be adopted or Skyryse's.  
16:31:24 21 I'll give you a brief, brief opportunity to file motions  
16:31:31 22 in support of your respective positions. And, if you  
16:31:35 23 want, you can just incorporate by reference the  
16:31:39 24 particular portions of your letters that have already  
16:31:42 25 been submitted. But, if there is anything additional

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16:31:45 2 you want to have me consider in that regard, I'm happy  
16:31:51 3 to do it. But I think you need, because you're telling  
16:31:54 4 me this is time sensitive, and I believe it, then you  
16:31:59 5 need to give me those motions, I would say, by  
16:32:03 6 Wednesday. And I will, I will get to it as quickly as I  
16:32:10 7 can. You know, I've had your oral argument. I don't  
16:32:13 8 need any additional oral argument and then I'll get a  
16:32:18 9 decision out on that issue as soon as I can. If that  
16:32:22 10 means that May 19th deadline is somehow affected because  
16:32:27 11 I conclude you do get access or not and you haven't had  
16:32:31 12 access, then it's going to be have to be modified, but  
16:32:36 13 I'm not saying which way I'm going because, quite  
16:32:39 14 frankly, I don't know. But, you know, we've been at  
16:32:45 15 this, and it's been helpful to me and I hope it's  
16:32:49 16 helpful to you, but we've been at it for two hours. And  
13:34:38 17 we'll talk down the road about setting up additional  
13:34:41 18 conferences again if somebody feels that there is  
13:34:44 19 something that they need to have decided, that it's  
13:34:48 20 something I can decide, make a motion. If it's  
13:34:51 21 something that Judge Vilardo has to decide, make the  
13:34:53 22 motion to him. But I urge you, particularly because  
13:34:59 23 we're going to have new counsel, you all, obviously, are  
13:35:03 24 very accomplished professionals, you all know more about  
13:35:07 25 this area of law than I do, and I dare say than Judge

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13:35:12 2 Vilardo does. But I just encourage you all to work with  
13:35:14 3 each other as best you can on minimizing issues that you  
13:35:21 4 need to bring to the Court. And, again, I don't say  
13:35:23 5 that because I'm trying to duck work. I mean, you all  
13:35:28 6 have plenty of work to do. I have plenty of work to do.  
13:35:31 7 We're not going to run out of work. So, but in terms of  
13:35:35 8 what you need the Court to decide, try to keep focused  
13:35:38 9 on that. Was somebody else going to say something?

13:35:44 10 MS. ANDOH: Your Honor, I was going to  
13:35:46 11 reference the fact that we had one additional request  
13:35:49 12 for relief in the May 4 letter, which related to, in  
13:35:53 13 addition to the discovery schedule, which I think, based  
13:35:56 14 on what your Honor is saying, we can sort of operate as  
13:35:59 15 though it's in place, but your Honor won't order it  
13:36:03 16 until it's clear whether the protective order is going  
13:36:07 17 to be put in place in whatever structure it is. The  
13:36:10 18 other issue we had was the question around ordering  
13:36:13 19 disclosures from Skyryse, further information relating  
13:36:17 20 to the disclosures that they made to your Honor, I guess  
13:36:21 21 it was last week. I think in light of the situation and  
13:36:25 22 in light of the need for a ruling on the inspection  
13:36:30 23 protocol, perhaps we can raise with Judge Vilardo  
13:36:33 24 whether the more appropriate way to move to compel those  
13:36:37 25 disclosures is in connection with what we perceive to be



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13:36:43 2 violations of the March 11th and March 17th orders as  
13:36:46 3 opposed to through a discovery mechanism. But I sort of  
13:36:51 4 hold that issue up for your Honor's consideration.

13:36:55 5 MAGISTRATE JUDGE MCCARTHY: I'll tell you  
13:36:56 6 right now that you will get no argument from me to the  
13:37:01 7 contrary of that, so you can bring it up to him and he  
13:37:06 8 can kick it back to me if he wants, but you're going to,  
13:37:10 9 I believe, be talking to him on Tuesday. And,  
13:37:12 10 initially, why don't you take it up with him? And, I  
13:37:16 11 will say that the disclosure having been made about the  
13:37:18 12 problem or about the issue having arisen last week, I  
13:37:22 13 would expect that Skyryse, and I have no reason to  
13:37:26 14 doubt, but I will just again emphasize that Skyryse  
13:37:32 15 needs to keep going on that inspection or investigation  
13:37:37 16 and make disclosures to Moog as soon as reasonably  
13:37:43 17 possible as to the progress of that investigation. I'm  
13:37:47 18 not going to put a particular deadline in place right  
13:37:52 19 now. Maybe Judge Vilardo will want to do that, but that  
13:37:56 20 is up to him.

13:37:57 21 Okay. Is there anything else -- oh. Let me  
13:38:03 22 ask this. I mean, and, again, maybe it's none of my  
13:38:08 23 business, but by when is the transition of counsel for  
13:38:12 24 Skyryse going to be complete?

13:38:15 25 MS. DOMINGUEZ: Your Honor, we're working on

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13:38:17 2 that with Latham and Watkins. We only learned of this  
13:38:20 3 news yesterday, but we expect to complete it very  
13:38:26 4 expeditiously.

13:38:26 5 MAGISTRATE JUDGE MCCARTHY: Ms. Dominguez,  
13:38:27 6 if we don't speak again or anybody from your firm, I  
13:38:30 7 hope our paths will cross on another case. So, and,  
13:38:33 8 again, I, without deciding any issue as to the merits, I  
13:38:40 9 do appreciate the fact that your firm came forward last  
13:38:45 10 week and made that disclosure to Moog and to the Court.

13:38:50 11 MS. DOMINGUEZ: Thank you, your Honor. And  
13:38:51 12 I just make one note, because you did ask the question  
13:38:56 13 of whether or not the investigation has continued, it  
13:39:27 14 absolutely has. Skyryse has devoted tremendous  
13:40:33 15 resources and asked FTI to add additional staff. So  
13:40:37 16 there are many folks at FTI working around the clock to  
13:40:41 17 get that forensic investigation done.

13:40:46 18 MR. LUMISH: And we will continue that  
13:40:47 19 effort. We'll do nothing but push that forward.

13:40:50 20 MAGISTRATE JUDGE MCCARTHY: Okay, thank you.  
13:40:51 21 Rob, were you going to say something.

13:40:54 22 MR. FLUSKEY: I just want to know one thing,  
13:40:57 23 your Honor. In terms of the further disclosures,  
13:41:00 24 Skyryse promised to amend certain discovery responses.  
13:41:04 25 We ask for a date by which that will occur. I do think

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13:41:08 2 that issue is within the scope of your referral. This  
13:41:11 3 is a discovery issue. I'm not asking for a ruling now,  
13:41:14 4 obviously, but I do see on the horizon a potential  
13:42:05 5 dispute, because, to date, we appreciate the disclosures  
13:42:08 6 from counsel, make no mistake, but, ultimately, we need  
13:42:10 7 to hear that from Skyryse under oath. And some of the  
13:42:16 8 interrogatories that Moog served call for that. So, go  
13:42:23 9 ahead.

13:42:23 10 MAGISTRATE JUDGE MCCARTHY: Again, your  
13:42:25 11 point is noted. I'm not going to impose any deadline  
13:42:30 12 today that may come back to me as being within my, you  
13:42:33 13 know, my discretion, but we'll take that up at a later  
13:42:38 14 date, okay? I want to focus on getting the protocol  
13:42:41 15 issue resolved and then we'll move on from there.

13:42:47 16 Okay. Anything further? Okay. Thank you  
13:42:52 17 all. I look forward to working with you going forward  
13:42:59 18 and we will see what transpires. Okay. Thank you.

13:43:03 19 MR. FLUSKEY: Thank you.

13:43:04 20 MS. ANDOH: Thank you, your Honor.

13:43:05 21 MS. DOMINGUEZ: Thank you, your Honor.

22 \* \* \*

23 CERTIFICATE OF REPORTER

24  
25 I certify that the foregoing is a correct transcript

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2 of the record to the best of my ability of proceedings  
3 transcribed from the audio in the above-entitled matter.  
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5 S/ Karen J. Clark, RPR  
6 Official Court Reporter  
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